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No. 51] NEW DELHI, SATURDAY, DECEMBER 17, 1988/AGRAHAYANA 26, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)

PART II—Section 3—Sub-section (II)

(यहां मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 28 नवम्बर, 1988

सूचनाएं

का.प्र. 3625—नोटरीय नियम, 1956 के नियम 6 के अनुसूचन में सशम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री भली रतन सागोरी ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे उदयपुर डिस्ट्रिक्ट में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5(22)/88-न्याय.]

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 28th November, 1988

NOTICES

S.O. 3625—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule

3.03GI/88—

4 of the said Rules, by Smt. Ratan Nagori for appointment as a Notary to practice in Udaipur Distt.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(22)/88-Judl.]

का.प्र. 3626—नोटरीय नियम, 1956 के नियम 6 के अनुसूचन में सशम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री लीलधर धमजी शह ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे महाराष्ट्र राज्य, (ग्रेटर बम्बे) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए।

[सं. 5(39)/88-न्याय.]

के.डी. सिंह, सशम प्राधिकारी

S.O. 3626—Notice is hereby given by the Government Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Lildhar Damji Shah for appointment as a Notary to practice in Greater Bombay.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(39)/88-Judl.]

K. D. SINGH, Competent Authority

(6537)

कर्मिक और लोक शिक्षा तथा पेंशन मंत्रालय

(कर्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 नवम्बर, 1988

आदेश

का. प्रा. 3827—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, असम राज्य सरकार की सहमति से, दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तार निम्नलिखित अपराधों के अन्वेषण के लिए संपूर्ण असम पर करती है :—

- (क) असम के कोकरा भाड़ जिले के भूमका ग्राम सं. 12 में असम पुलिस के कुछ कर्मियों द्वारा अज्ञाति की महिलाओं के अश्लिषित बलात्कार के संबंध में कोकरा भाड़ जाने में क्रमशः अपराध सं. 85/88 और 99/88 के अधीन रजिस्ट्रीकृत, भारतीय दंड संहिता की धारा 376 और भारतीय दंड संहिता की धारा 376/325 के अधीन दंडनीय अपराध ।

- (ख) ऊपर वर्णित एक या अधिक अपराधों के संबंध में या उनके संपन्न प्रयत्नों, बुद्धियों और चतुराई के और ऊन्ही तथ्यों से उत्पन्न होने वाले ऐसे ही संभव्यता के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में ।

[संख्या 228/30/88-ए.वी.डी. (II)]

जी. सीतारामन, सचिव

MINISTRY OF PERSONNEL, P.G. & PENSIONS

(Department of Personnel & Training)

New Delhi, the 28th November 1988

ORDER

S.O. 3627.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government with the consent of the State Government of Assam, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Assam for investigation of offences as hereunder :—

- (a) Offences punishable under section 376, Indian Penal Code and 376/325 Indian Penal Code registered under Crime No. 85/88 and 99/88 respectively at Kokrajhar Police Station in connection with the alleged rape of tribal girls by some personnel of Assam Police at Bhumka village No. 12 Kokrajhar District of Assam.
- (b) Attempts abetment and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence of offences committed in the course of the same transaction arising out of the same facts.

[No. 228/30/88-AVD. II]

G. SITARAMAN, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 24 नवम्बर, 1988

आदेश

स्टाम्प

का. प्रा. 3828—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उस शुल्क को माफ करती है जो नेशनल हाइड्रो इलेक्ट्रिक पावर कॉर्पोरेशन लिमिटेड द्वारा जारी किए जाने वाले मान एक सौ पचास करोड़ रु. के मूल्य के 9% कर-मुक्त बंधनों, सं-भुजला के रूप में निनिष्ठित ऋणों के स्वरूप के बंधनों पर उक्त अधिनियम के अन्तर्गत प्रभावी है ।

[सं. 44/88-स्टाम्प-का.न. 33/53/88-वि.क.)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 24th November, 1988

ORDER**STAMPS**

S.O. 3628.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of debentures described as 9% tax-free bonds, C-Series of the value of rupees one hundred and fifty crores only to be issued by the National Hydroelectric Power Corporation Ltd., are chargeable under the said Act.

[No. 44/88-Stamps-F. No. 33/53/88-ST.]

का. प्रा. 3629—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एनडीएलए को माफ करती है जो नेशनल हाइड्रो इलेक्ट्रिक पावर कॉर्पोरेशन द्वारा जारी किए जाने वाले मान पचास करोड़ रु. के मूल्य के पांच करोड़ (1988) प्रथम श्रृंखला के "आई.डी.पी.आई. ऋण" के प्रारम्भिक मोटों के स्वरूप में बंधनों पर उक्त अधिनियम के अन्तर्गत प्रभावी है ।

[सं. 45/88-स्टाम्प-का.न. 33/31/88-वि.क.]

S.O. 3629.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes "IDBI Loan—Rs. 5 crores (1988)—1st series" of the value of rupees five crores only to be issued by the National Small Industries Corporation are chargeable under the said Act.

[No. F. 45/88-Stamps-F. No. 33/31/88-ST.]

नई दिल्ली, 1 दिसम्बर, 1988

आदेश

स्टाम्प

का. प्रा. 3630—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एनडीएलए को माफ करती है जो इंडीय सि. इंडस्ट्रीज कॉर्पोरेशन, उड़ीसा को मान एक सौ लाख रुपये के उक्त लक्षित स्टाम्प शुल्क की अवधि करने की अनुमति

केनी है जो एक कम्पनी द्वारा जारी किए जाने वाले पन्नेह करोड़ रु. के अंकित मूल्य के 100-100 रु. के 15,00,000-14 प्रतिशत असम्परिवर्तनीय भारतीया ऋणपत्रों (5वीं श्रृंखला) पर स्टाम्प शुल्क के कारण प्रभाव है।

[सं. 47/88-स्टाम्प-का.सं. 33/75/88-वि.क.]

बी.आर. मेहमी, धन्य अधिकारी

New Delhi, the 1st December, 1988

ORDER

STAMPS

S.O. 3630.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits the Orient Paper and Industries Limited, Brajaraj Nagar, Orissa to pay consolidated stamp duty of rupees Eleven lakhs twenty five thousand only, chargeable on account of the stamp duty on 15,00,000—14% Non Convertible Secured debentures (V Series) of Rs. 100 each of the face value of rupees fifteen crores to be issued by the said Company.

[No. 47/88-Stamp F. No. 33/75/88-ST]

B. R. MEHMI, Under Secy.

भारतीय रिजर्व बैंक

(ग्रामीण प्रयोजना और ऋण विभाग)

बम्बई, 29 नवम्बर, 1988

का. प्रा. 3631.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 42 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय रिजर्व बैंक एतद्वारा क्षेत्रीय बैंक अधिनियम, 1976 (1976 का 21) के अंतर्गत गठित समस्त क्षेत्रीय ग्रामीण बैंकों को भारतीय रिजर्व बैंक अधिनियम 1934 की धारा 42 की उपधारा (1) के उपबंधों से दिनांक 1 जनवरी, 1989 से 31 दिसम्बर, 1990 तक आगामी दो वर्षों के लिए मुक्त करता है।

[आर पी सी डी सं. आर एफ. 409/324-88/89]

RESERVE BANK OF INDIA

(Rural Planning and Credit Department)

Bombay, the 29th November, 1988

S.O. 3631.—In exercise of the powers conferred by sub-section (7) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934), the Reserve Bank of India hereby exempts all Regional Rural Banks constituted under the Regional Rural Banks Act, 1976 (21 of 1976) from the provisions of the proviso to sub-section (1) of Section 42 of the Reserve Bank of India Act, 1934 for a further period of two years commencing from 1 January 1989 to 31 December 1990.

[RPCD. No. RF. 409/324-88/89]

का. प्रा. 3631.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 42 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय रिजर्व बैंक एतद्वारा क्षेत्रीय ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) के अंतर्गत गठित समस्त क्षेत्रीय ग्रामीण बैंकों को भारतीय रिजर्व बैंक अधिनियम 1934 की धारा 42 की उपधारा (1) के उपबंधों से दिनांक 1 जनवरी, 1989 से 31 दिसम्बर, 1990 तक आगामी दो वर्षों के लिए मुक्त करता है।

[आर पी सी डी सं. आर एफ. 410/324-88/89]

मु. के. लर्ना, कार्यालय निदेशक

S.O. 3632.—In exercise of the powers conferred by sub-section (7) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934), the Reserve Bank of India hereby exempts all Regional Rural Banks constituted under the Regional Rural Banks Act, 1976 (2 of 1976), from the provisions of sub-section (1A) of Section 42 of the Reserve Bank of India Act, 1934 for a further period of two years commencing from 1 January 1989 to 31 December 1990.

[RPCD. No. RF. 410/324/88-89]

U. K. SARMA, Executive Director

वाणिज्य मंत्रालय

नई दिल्ली, 22 नवम्बर, 1988

का. प्रा. 3633.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में वाणिज्य मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. भारतीय विदेश व्यापार संस्थान
बी-21 इंस्टीट्यूशनल एरिया
(आई आई टी के दक्षिण में)
नई दिल्ली-110019
2. उप मुख्य नियंत्रक, आयात-निर्यात का कार्यालय,
बिल्डिंग 'ए' तीसरा तल,
गुरु तेग बहादुर कमलियल कॉम्प्लेक्स,
टी टी नगर, भोपाल-462003 (म.प्र.)

[सं. ई-11011/22/86-हिन्दी]

ओ.पी. कालरा, उप सचिव,

MINISTRY OF COMMERCE

New Delhi, the 22nd November, 1988

S.O. 3633.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union), Rule, 1976, the Central Government hereby notifies the following offices under the Ministry of Commerce whereof more than 80 per cent have acquired working knowledge of Hindi :-

1. Indian Institute of Foreign Trade,
B-21, Institutional Area, South of I.I.T.
New Delhi-110016.
2. Office of the Deputy Chief Controller,
Imports & Exports,
Building 'A', Third Floor,
Guru Teg Bahadur Commercial Complex,
T.T.Nagar, Bhopal-462003(MP).

[No. E-11011/22/86-Hindi]

O. P. KALRA, Dy. Secy.

मुख्य नियंत्रक, आयात-निर्यात का कार्यालय

नई दिल्ली, 17 नवम्बर, 1988

आवेदन

का. प्रा. 3634.—जैसस कनोवर स्ट्र, 261, एम. पी. रोड, बम्बई-400050 को आयात एवं निर्यात नीति 1988-91 के पैरा 103(1) के अन्वये एक सौ और दो प्रजनक घोड़ियों के आयात के लिए 8 लाख रुपये (मौ लाख रुपये मात्र) के लिए आयात लाइसेंस संख्या पी/ए/0293950 दिनांक 19-7-88 दिया गया था।

2. पार्टी ने उक्त लाइसेंस की अनुमति प्रति जारी करने के लिए इस अवसर पर आवेदन किया है कि उनसे मूल लाइसेंस प्राप्त करने से

गया है। अपने तर्कों के समर्थन में मैसर्स क्लोवर स्टुड, बम्बई ने आयात-नियंत्रित प्रक्रिया पुस्तक 1988-9 के अध्याय-2 के पैरा 89 द्वारा यथाप्रोहित कार्यपत्र दखिन किया है। कार्यपत्र में उन्होंने बताया है कि मूल लाइसेंस उनसे अस्थायित्व हो गया है और उसे किसी भी पत्रन पर पंजीकृत नहीं कराया गया है। अनुलिपि लाइसेंस, मूल लाइसेंस की पूरी राशि प्रेषित की जाख स्वयं मात्र के लिए अर्पित है। मैसर्स क्लोवर स्टुड, बम्बई इस बात में सहमत है और यह बताने देते हैं कि यदि उक्त लाइसेंस बाव में प्राप्त हो जाता है तो उसे रिहाई के लिए इस कार्यालय की सेवा दिया जाएगा।

3. मैं संतुष्ट हूँ कि मूल लाइसेंस सं. पी/ए/0293950 दिनांक 18-7-88 खो गया है। यथासंभवित आयात नियंत्रण आदेश, 1955 दिनांक 7-12-55 की उ-धारा 9(ग) द्वारा प्रवृत्त अधिकारों का प्रयोग करते हुए मैं आयात लाइसेंस सं. पी/ए/0293950 दिनांक 18-7-88 की एतद्वारा रद्द करता हूँ। पार्टी को एतद्वारा रद्द किए गए मूल लाइसेंस के बचले में अनुलिपि ला. सेंस जारी किया जा रहा है।

[फा.सं. 4/15/ए.एम.-89/ए.एल.एस]

OFFICE OF THE CHIEF CONTROLLER OF IMPORTS & EXPORTS

New Delhi, the 17th November, 1988

ORDER

S.O. 3634.—M/s. Glover Stud, 216, SV Road, Bandra, Bombay-400050 were granted an Import Licence No. P/A/0293950 dt. 18-7-88 for Rs. 9 lakhs (Nine Lakh) for import of one stallion and two broodmares under para 103(1) of Import & Export Policy 1988-91.

2. The party has applied for issue of duplicate copy of the above mentioned licence on the ground that the original licence has been misplaced by them. In support of their contention, M/s. Glover Stud, Bombay have filed an affidavit as required in para 9 of Chapter II of Handbook of Import & Export Procedures 1988-91. In the affidavit, they have stated that they have misplaced the original licence and the same has not been registered with any of the ports. The duplicate licence is required for the entire amount of the original licence i.e. for Rs. Nine Lakh. M/s. Glover Stud Bombay agrees and undertakes to return the said licence to this office for record, if traced later on.

3. I am satisfied that the original licence No. P/A/0293950 dt. 18-7-88 has been lost. In exercise of the powers conferred under sub-clause 9(d) of Import Control Order, 1955 dated 7-12-55 as amended, I hereby cancel the Import licence No. P/A/0293059 dated 18-7-88. A duplicate Import Licence is being issued to the party in lieu of the original licence cancelled hereby.

[F. No. 4/15/AM-89/ALS]

नई दिल्ली, 28 नवम्बर, 1988

आदेश

फा.सं. 3635—मैसर्स स्काई रूम प्रा. लि., 57 पार्क स्ट्रीट, कलकत्ता-16 को बराबर के आयात के लिए 50,000/-रु. (पचास हजार रुपये

मात्र) का आयात लाइसेंस सं. पी/पी/1481476 दिनांक 23-6-87 दिया गया था। आवेदक ने उक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुलिपि जारी करने के लिए इस आधार पर आवेदन किया है कि उक्त आयात लाइसेंस की मूल सीमाशुल्क प्रयोजन प्रति खो गयी है। पाते यह बताया गया है कि पूर्वोक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति कलकत्ता कस्टम्स (एयरपोर्ट) के पास सुरक्षित की और 10,000/-रु. की आंशिक राशि के लिए उसका उपयोग किया जा चुका तथा और शेष 40,000/-रु. की बचाया राशि के लिए सीमाशुल्क प्रयोजन प्रति की अनुलिपि की आवश्यकता है।

2. अपने तर्कों के समर्थन में, लाइसेंसधारक ने विहित व्यापिक आधिकारी के पास विधिवत जाय लेकर जनवरत दखिन किया है। तदनुसार मैं संतुष्ट हूँ कि आयात लाइसेंस सं. पी/पी/1481476 दिनांक 23-6-87 की मूल सीमाशुल्क प्रयोजन प्रति आवेदक से खो गई है। समय-समय पर यथासंशोधित आयात (नियंत्रण) आदेश, 1955 की उ-धारा 9(ग) के अधीन प्रवृत्त अधिकारों का प्रयोग करते हुए मैसर्स स्काई रूम प्रा. लि., कलकत्ता को जारी आयात लाइसेंस सं. पी/पी/1481476 दिनांक 23-6-87 की पूर्वोक्त मूल सीमाशुल्क प्रयोजन प्रति एतद्वारा रद्द की जाती है।

3. उपर्युक्त लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुलिपि प्रति पार्टी को प्रलग से जारी की जा रही है।

[फा. सं. 18/424/86—37 ए. एल. एस/694]

New Delhi, the 28th November, 1988

ORDER

S.O. 3635.—M/s. Sky Room Pvt. Ltd. 57, Park Street, Calcutta 16, were granted Import Licence No. P/P/148.476 dated 23-6-87 for Rs. 50,000/- (Rupees fifty thousand only) for import of Asparagus. The applicant have applied for issue of Duplicate Copy of the Customs Purpose Copy of the above mentioned Import Licence on the ground that the original Customs Purpose Copy of the above mentioned Import Licence has been misplaced/lost. It has been further stated that the original Custom Purpose Copy of the said licence was registered with the Calcutta Customs (Air Port) and utilised partly for Rs. 10,000/- and to the amount for which the duplicate Customs Purpose Copy is now required is to cover the balance of Rs. 40,000/-.

2. In support of their contention, the licensee have filed an affidavit duly sworn in before appropriate judicial authority. I am accordingly satisfied that the original Customs Purpose Copy of the original Import Licence No. P/P/1481476 dated 23-6-87 has been lost by the applicant. In exercise of the powers conferred under Sub-clause 9(cc) of the Import (Control) Order, 1955, dated 7-12-1955 as amended from time to time the said original customs purpose copy of the Import Licence No. P/P/1481476 dated 23-6-87 issued to M/s. Sky Room Pvt. Ltd., Calcutta is hereby cancelled.

3. A duplicate copy of the Customs Purpose Copy of the above mentioned licence is being issued to the party separately.

[F. No. 18/424/86-87/ML9/694]

नई दिल्ली, 29 नवम्बर, 1988

नई दिल्ली, 17 दिसम्बर, 1988

आदेश

का.भा. 3636.—मैसर्स राजमहल होटल (दी इंडियन होटल कं. लि.) नं. 1, मान सिंह रोड, नई दिल्ली को, अनुपंगी और अधिष्ठित पुर्जों सहित हैमिल्टन बीच कोकटेल मिक्सर, 6 नमों के आयात के लिए 53,347 रु. (फिफ्टन हजार तीन सौ रीतालिस रुपये मात्र) का आयात लाइसेंस सं. पी/पी/1482683 दिनांक 19-2-88 दो प्रतियों में दिया गया था। आदेशक ने उपर्युक्त आयात लाइसेंस की दोनों मुद्रा विलिपि प्रति के लिए इस आधार पर आशंका किया है कि आयात लाइसेंस की दोनों मूल प्रतियां अस्पष्ट/बो गई हैं। आगे यह भी कहा गया है कि मूल लाइसेंस किसी भी सीमापुस्तक प्राधिकारी के पास पंजीकृत नहीं कराया गया था और इससे आयात लाइसेंस का विलुप्त भी उपयोग नहीं किया गया है।

2. अपने तर्कों के समर्थन में लाइसेंसधारी ने विहित स्थायिक प्राधिकारी के नामने विधिवत अपन कर एक जपण-पत्र दाखिल किया है। मैं, संतुष्ट हूँ कि दो प्रतियों में आयात लाइसेंस सं. पी/पी/1482683 दिनांक 19-2-88 की दोनों प्रतियां आदेशक से ली गयी हैं। समय-समय पर यका संबंधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 को उप-धारा 9(क) ग द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स राजमहल होटल, नई दिल्ली को जारी किए गए उपर्युक्त आयात लाइसेंस सं. पी/पी/1482683 दिनांक 19-2-88 को एनई द्वारा रद्द किया जाता है।

3. पार्टी को आयात लाइसेंस की अनुलिपि प्रति प्रलग जारी की जा रही है।

[का.सं. 18/300/87-88/एम एस एस/703]

एन. एस. कृष्णामूर्ति, उप मुख्य
निर्देशक, आयात निर्यात कड़े मुद्रा निरीक्षण,
आयात-निर्यात

New Delhi, the 29th November, 1988

ORDER

S.O. 3636.—M/s. Taj Hotel (The Indian Hotel Co. Ltd.) No 1, Mansingh Road, New Delhi were granted an Import Licence No P/P/1482683 dated 19-2-88 in duplicate for Rs. 53,347 (Rupees fifty three thousand three hundred and forty seven only) for Import of Hamilton Beach Cocktail Mixer 6 Nos. with accessories and spares. The applicant have applied for issue of Duplicate Copy of the Exchange Control Purpose Copy and Custom Purpose Copy of the abovementioned Import Licence in the ground that both the original copies of the Import Licence have been misplaced/lost. It has further been stated that the original Licence was not registered with any Customs Authority and as such the value of the Import Licence has not been utilised at all.

2. In support of the contention, the licensee has filed an affidavit duly sworn in before appropriate judicial authority. I am accordingly satisfied that the original licence in duplicate No. P/P/1482683 dated 19-2-88 has been lost by the applicant. In exercise of the powers conferred under Sub-Clause 9(cc) of the Import (Control) Order 1955, dated 7-12-1955 as amended from time to time, the said original Import Licence No. P/P/1482683 dated 19-2-88 issued to M/s. Taj Mahal Hotel, New Delhi is hereby cancelled.

3. A duplicate copy of the Import Licence is being issued to the party separately.

[F. No. 18/300/87-88/MLS/702]

N. S. KRISHNAMURTHI,

Dy. Chief Controller of Imports & Exports
For Chief Controller of Imports & Exports

का. भा. 3637.—केन्द्रीय सरकार निर्यात (नवालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स दिल्ली टेस्ट हाउस, सोहना इंडस्ट्रियल स्टेट, जी. टी. कारनाल रोड, दिल्ली-110033 को कपड़े धोने के साबुन का निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए इन शक्तों के अधीन अभिकरण के रूप में मान्यता देती है कि संगठन कपड़े धोने के साबुन का निर्यात (निर्यात) नियम, 1966 के उप नियम 4 के अन्तर्गत निर्यात निरीक्षण परिपत्र के किसी भी अधिकारी को प्रमाण-पत्र जारी करने के लिए संगठन द्वारा अपनाई गई निरीक्षण प्रणाली को जांच करने के लिए पर्याप्त सुविधाएं देगा।

[फाइल सं. 5 (12)/88-ई आई एच ई पी]

New Delhi, the 17th December, 1988

S.O.3637.—In exercise of the powers conferred by section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of one year with effect from the date of publication of this notification M/s. Delhi Test House, Sohana Industrial Estate, G.T. Karnal, Road, Delhi-110033 as an agency for inspection of Laundry Soap prior to export subject to the condition that the organisation shall give adequate facilities to any officer of the Export Inspection Council to examine the method of inspection followed by the organisation in granting the certificate of inspection under sub-rule 4 of the Export of Laundry Soap (Inspection) Rules, 1966

[F. No. 5(12)/88-EI&EP]

का. भा. 3638.—केन्द्रीय सरकार निर्यात (नवालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स दिल्ली टेस्ट हाउस, सोहना इंडस्ट्रियल स्टेट, जी. टी. कारनाल रोड, दिल्ली-110 033 को प्राप्त इससे उपाबंध अनुसूची में विनिर्दिष्ट कार्बनिक रसायनों का निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन से एक वर्ष की अवधि के लिए इन शक्तों के अधीन अभिकरण के रूप में मान्यता देता है कि संगठन कार्बनिक रसायनों के निर्यात (निर्यात) नियम, 1966 के अन्तर्गत निर्यात निरीक्षण परिपत्र के किसी भी अधिकारी को निरीक्षण प्रमाण-पत्र जारी करने के लिए संगठन द्वारा अपनाई गई निरीक्षण प्रणाली को जांच करने के लिए पर्याप्त सुविधाएं देगा।

अनुसूची

1. एथिलिक एसिड
2. हार्डड्रोक्सीनान
3. ओक्जेलिक एसिड
4. नेपथीलीन
5. बेनजीन
6. एन्थीसीन
7. टोर्बुईन
8. एथिल एल्कोहल
9. जार्डिन
10. सोडियम सॉल्ट्स

[फाइल सं. 5(12)/88-ईआईएचईपी]

S.O. 3638.—In exercise of the powers conferred by section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) the Central Government hereby recognises for

a period of one year with effect from the date of publication of this notification M/s. Delhi Test House, Sohana Industrial Estate, G.T. Karnal Road, Delhi-110033 as an agency for inspection of Organic Chemicals specified in Schedule annexed hereto prior to export subject to the condition that the organisation shall give adequate facilities to any officer of the Export Inspection Council to examine the method of inspection followed by the organisation in granting the certificate of inspection under sub-rule 4 of the Export of Organic Chemicals (Inspection) Rules, 1966.

SCHEDULE

1. Acetic Acid.
2. Hydroquinone.
3. Oxalic Acid.
4. Naphthalene
5. Benzene
6. Anthracene
7. Toluene
8. Ethyl Alcohol
9. Xylene
10. Sodium Citrate.

[F. No. 5(12)/88-FI&EP]

का. प्र. 3639.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, मैमर्स बिस्ली टेस्ट हाउस, सोहना इंडस्ट्रियल स्टेट, जी. टी. कर्नाल रोड, दिल्ली-110 033 को भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का. प्र. 270 तारीख : 25 मार्च, 1966 के उपबंध की अनुसूची में विनिर्दिष्ट रसायनों का उनके निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए इस शर्तों के अधीन प्रतिकरण के रूप में मान्यता देता है कि संगठन प्रकाशित रसायनों के निर्यात (निरिक्षण) नियम 1966 के नियम 4 के उपनियम (4) के प्रस्तावित निरीक्षण प्रमाण-पत्र देने के लिए निर्यात निरीक्षण परिषद के किसी भी अधिकारी को संगठन द्वारा प्रपनर्तई पूर्व निरीक्षण पद्धति की जांच करने के लिए सभी सुविधाएं देगा।

[फाइल सं. 5(12)/88-ईआई एंड ई को]

एन.एस. इन्टरनल, संयुक्त सचिव

S.O. 3639.—In exercise of the powers conferred by Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) the Central Government hereby recognises for a period of one year with effect from the date of publication of this notification M/s. Delhi Test House, Sohana Industrial Estate, G.T. Karnal Road, Delhi-110033 as an agency for inspection of the Inorganic Chemicals specified in Schedule annexure to the notification of the Government of India, Ministry of Commerce No. S.O. 1270 dated the 25th March, 1966 prior to their export subject to the condition that the organisation shall give adequate facilities to any officer of the Export Inspection Council to examine the method of inspection followed by the organisation in granting the certificate of inspection under sub-rule (4) of rule 4 of the Export of Inorganic Chemical (Inspection) Rules, 1966.

[F. No. 5(12)/88-EI&EP]

N. S. HARIHARAN, Jt. Secy.

कल्याण मंत्रालय

नई दिल्ली, 29 जुलाई, 1988

का. प्र. 3640.—केन्द्रीय सरकार, राजभाषा (संघ के प्रामाणिक प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम, 10 के उप नियम (4) के अनुसार मंत्रालय के निम्नलिखित कार्यालय को जिसमें

80% से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

अल्पसंख्यक भाषायोग,

लोकनायक भवन, 5वीं मंजिल,

खान मार्केट, नई दिल्ली-110003

[सं. 11017/5/87-हिन्दी]

एस. पी. वर्मा, निदेशक

MINISTRY OF WELFARE

New Delhi, the 29th July, 1988

S.O. 3640.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official purposes of the Union) Rules, 1976 the Central Government hereby notifies the following office of the Ministry of Welfare, where more than 80 per cent staff has acquired working knowledge of Hindi :—

Minority Commission,

Lok Nayak Bhavan (Fifth Floor),

Khan Market, New Delhi-110003.

[No. 11017/5/87-Hindi]

S. P. VERMA, Director

संचार मंत्रालय

(दूरसंचार विभाग)

नई दिल्ली, 2 दिसम्बर, 1988

का. प्र. 3641.—स्वाधीन अधिसूचना संख्या 627, दिनांक 8 मार्च, 1960 द्वारा लागू किए गए भारतीय तार नियम, 1951 के नियम 434 के खंड III के पैरा 1(क) के अनुसार महानिदेशक, दूरसंचार विभाग ने पंजाब दूरसंचार संचालन में प्रमुख दूरसंचार जिला के रडगा, मेहता चौक, खिलचियां, बुताला, सठोभासा, टोपटा, भलाईपुर, तथा सीयाव, टेलिकोन केन्द्रों, हरियाणा दूरसंचार संचालन के तेलिपुरा टेलिकोन केन्द्र; केरला दूरसंचार संचालन के कोकाठि तथा पेनालिका टेलिकोन केन्द्रों, मध्य प्रदेश, दूरसंचार संचालन के सिद्धी टेलिकोन केन्द्र; और ओडिशा दूरसंचार संचालन के बरबोव टेलिकोन केन्द्र में, दिनांक 16-12-1988 से प्रमाणित दर प्रणाली लागू करने का निर्णय किया है।

[संख्या 5-1/88-टी. एच. बी.]

पी. आर. काररा, सहायक महानिदेशक (पी एच. बी)

MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

New Delhi, the 2nd December, 1988

S.O. 3641.—In pursuance of para 1(a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director General, Department of Telecommunications, hereby specifies 16-12-88 as the date on which the Measured Rate System will be introduced in Rayya, Mehta Chowk, Khilchian, Butala Sathiala, Tangra, Bhailpur and Chogawan Telephones Exchanges under Amritsar Telecom, District in Punjab Telipura Telephone Exchange under Haryana Telecom Circle; Vorkady and Paivalika Telephone Exchange under Kerala Telecom Circle; Sidhi Telephone Exchange under Madhya Pradesh Telecom Circle; and Barbil Telephone Exchange under Orissa Telecom Circle.

[No. 5-1/88-PHB]

P. R. KARRA, Asstt. Director General (PHB)

कागज संख्या

नई दिल्ली, 29 नवम्बर, 1988

का.सं. 3642—औद्योगिक विवाद अधिनियम, 1947 (1947 के 14) की प्रांत 17 के अनुसरण में, केन्द्रिय सरकार डाक व मोटर परिवहन मंत्रालय के प्रधानमंत्री से मद्रास निरीक्षकों और उनके कर्मचारियों के बीच, अनुबंध में निरूपित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचवट को प्रभावित करती है, जो कर्तीय सप्ताह को 21-11-88 प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 29th November, 1988

S.O. 3642.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of P & T Motor Services, Madras and their workmen, whichever received by the Central Government on 21-11-88.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Thursday, the 22nd day of September, 1988

PRESENT :

Thiru K. Natrajan, M.A., B.L.,

Industrial Tribunal

Industrial Dispute No. 102 of 1987

(In the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of P & T Motor Service, Madras)

BETWEEN

Thiru K. Govindarajulu,
S/o K. Kulasekaran,
No. 30 Vinayaga Maistry Street,
Sowcarpet, Madras-600079.

AND

The Senior Manager,
P & T Motor Services,
Madras-600006.

REFERENCE :

Order No. L-40012/30/85-D.II(B), dated 1-9-87 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 3rd day of August, 1988 upon perusing the reference, claim and counter statements and all the material papers on record and upon hearing the arguments of Thiru K. Chandru for Anna Mathew, Advocate appearing for the workman and of Thiru P. B. Krishnamoorthy, Central Government Pleader appearing for the Management and this dispute having stood over till this day for consideration, the Tribunal made the following.

AWARD

This dispute between the workman and the Management of P & T Motor Service, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its order No. L-40012/30/86-D II (B) dated 1-9-1987 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Sr. Manager, P & T Motor Service, Madras in terminating

Shri Govindarajulu, ex-casual driver from service w.e.f. 1-5-86 is legal and justified? If not, to what relief and from what date, the concerned workman is entitled to?"

(2) In the claim statement the Petitioner-workman states that he was appointed as a daily wages driver (Grade-C) on 26-8-1983 on adhoc basis though he was called for an interview for the post of Driver Grade 'C'. However, he accepted the said adhoc post as he had no other option. He was below 30 years at the time of entering the service and he was also working without any break. While so he also made a representation on 1-3-1984 requesting for a regular absorption in the post. But the Petitioner was intimated about the termination of his service with effect from 30-4-1986. Though he moved the Central Administrative Tribunal, Madras Bench challenging the said termination he withdrew his application on legal advice and raised an Industrial Dispute before the Assistant Labour Commissioner. Since the conciliation ended in failure, the reference has been made in this court. The order of termination is contrary to Section 25-F of the Industrial Disputes Act since no compensation was offered for his service. The notice given to the Petitioner for his termination is also contrary to Section 25-N(1)(a) of the Industrial Disputes Act. The Petitioner was well within the age limit for recruitment to the post of driver at the time of his initial recruitment. In an event he having been selected he is entitled to age relaxation by counting his adhoc service.

(3) The respondent in their counter statement states that P and T Motor Service cannot be termed as an 'industry' being a part of the department of Posts of Government of India. The management is carrying out the functions of the postal department, namely the sovereign functions of the State and hence the dispute is not maintainable. The employer of the Petitioner is the Union of India and not the Senior Manager, P & T Motor Service. The Petitioner though was sponsored by the Employment Exchange for the post of Drivers he was not selected for regular employment and was kept in the waiting list for consideration in the event of any of the 11 persons who were selected regularly declining to accept the offer of appointment. While so the Petitioner and 7 others were informed by the Department that they were engaged on casual basis and that such employment will not confer on them any right or claim for absorption against existing or future vacancies in the cadre of Driver. In response to the said offer, the Petitioner agreed to work on daily wage basis after giving written declaration to that effect on 2-9-1983. The letter dated 26-8-1983 is not an offer of appointment. He was employed only on adhoc basis. The Petitioner had the option either to accept or reject the casual employment. Regarding the allegations about age, he was 29 years as on 1-7-1983 as per his date of birth, viz., 4-5-1954. Any way, the representation made by the Petitioner was sent to higher authorities who had officially informed that the request of the Petitioner cannot be agreed to since the official was over aged for recruitment as per the recruitment rules in force and there is also a ban on filling up the vacancies in the cadre of driver. Hence this fact was communicated to the Petitioner and was given a month's notice intimating him that he will not be employed on a casual basis with effect from 30-4-1986. The employment of the Petitioner on a casual basis is legal and there is no question of termination and hence the application under Section 25-F of the Industrial Disputes Act does not arise. It is also incorrect to state that juniors to Petitioner are retained in service Section 25(N)(1)(a) of the Industrial Disputes Act has no application to the Petitioner's case. The Petitioner is not entitled to age relaxation. The Tribunal has no jurisdiction to entertain this matter.

(4) The point for consideration is :

(1) Whether the action of the Management of Sr Manager P & T Motor Service, Madras in terminating Thiru Govindarajulu, ex-casual driver from service w.e.f. 1-5-86 is legal and justified.

(2) If not, to what relief and from what date, the concerned workman is entitled to

(5) On behalf of the Petitioner. Exs. W-1 to W-4 were marked: On behalf of the Management Exs. M-1 to M-9

were marked. Since documents were marked by consent and the facts in this case have not been disputed and since only legal contentions have been raised, it is not necessary to discuss in detail about the nature of documents.

(6) The learned counsel for the Petitioner workman would straightway contend that the Respondent management being an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, the Petitioner being "workman" ought to have been retrenched by following the procedure laid under Section 25F of the same Act. In other words, it is the plea of the learned counsel for the Petitioner that failure to comply with the conditions precedent to retrenchment of workman under Section 25-F, the order of termination will become invalid and inoperative and consequently the retrenchment is not valid and the Petitioner has to be reinstated with all benefits. As against this contention, the learned counsel for the Respondent-Management vehemently contended that the Respondent-Management being a part of department of Central Government of India and the activities of the postal department can be carried out only by a State exclusively and not by any private individual or company, it would not come under the definition 'industry' so as to contend that the Respondent has violated the conditions under Section 25-F of the Industrial Disputes Act. In short, this plea is that this Tribunal has no jurisdiction to entertain the matter and consequently the application of Section 25-F of the Industrial Disputes Act does not arise. It is also contended by the learned counsel for the Respondent-Management that the Petitioner who was employed only as a casual employee on daily wages and on adhoc basis is liable to be terminated at any moment. In this connection, he would draw my attention to Ex. W-5, the declaration given by the Petitioner before accepting the offer of appointment as a casual employee. He undertakes that he has no right or claim for appointment as a permanent or daily wages driver. In the light of this declaration given by the Petitioner and also due to the fact that the representation of the Petitioner under Ex. M-6 addressed to the Director of Postal Services having been rejected as per Ex. M-7. The Petitioner was informed by Ex. M-8 that he would cease to be Casual Driver from 30-4-1986 or one month from the date of receipt of that letter whichever is earlier.

(7) The learned counsel for the Petitioner though would not dispute the correspondence with the Management would evidently contend that in as much as the Petitioner though employed casually the provisions of Industrial Disputes Act would be applicable so long as the Respondent-Management is an 'industry'. In this connection he referred to various decisions to substantiate that P & T Department is an 'industry' as per definition of Section 2(j) of the Industrial Disputes Act. 1978-I-L.L.J. Page 349 (Mangalore Water Supply and Sewerage Board vs. A. Rajappa and others) is an oft quoted decision on Section 2(j) of the Industrial Disputes Act. The Supreme Court has held various tests to decide whether any department or activity would fall under Section 2(j) to be called as an 'industry'. In 1979-I-L.L.J. Page 176 (K. R. B. Kaimal and another vs. Director of Postal Services, Trivandrum), the Petitioner who were employees of the Respondent Director of Postal Services, Trivandrum were removed from service. The removal was challenged by means of Writ Petition. The court held as follows :

"A public utility service such as railways, telephones, and the supply of power, light and water to the public, even if it is carried on by corporations would be an industry coming within the ambit of the Act. Such activities cannot be considered to be sovereign or legal functions and solely because rules are framed under Arts. 309 and 310 governing such employees, they will not be taken out of the scope of the Act."

In 1981-II-L.L.J. Page 382 (Tapan Kumar Jana vs. Calcutta Telephones and others, the Calcutta High Court has held that Telephones is an industry within the meaning of Section 2(j). Similarly in 1982-II-L.L.J. page 248 (Bhaskaran Vs. Sub-Divisional Officer) the Kerala High Court after discussion in detail the various decisions of the Supreme Court and also 1978-I-L.L.J. Page 349 came to a conclusion that P and T Department, a public utility service is an 'industry'. Thus it is clear

from the above decisions that the activities of the postal department though exclusively performed by the Central Government they are severable and are engaged in industrial activities and therefore Section 2(j) of the Act is attracted and hence it is an 'industry'.

(8) Now having found the Respondent is an 'industry' it has to be seen whether workman who was employed as a casual Driver can be considered as workman. In this connection, in 1981-II-L.L.J. Page 382 (Tapan Kumar Jana vs. Calcutta Telephones and others) the question arose whether Appellant being a casual labourer was a workman under Section 2(s) of the Industrial Disputes Act and the termination of service of the Appellant amounted to retrenchment within the meaning of Section 2(oo) of the Act. The High Court after an elaborate discussion held that the primary condition that has to be fulfilled by an employee to bring him within the definition of workman is that he must be employed in an industry for hire or reward. The concept of permanent employment is not the only criterion of the definition of "workman". Any employee who satisfies the primary condition stated above and who does not come within the exceptions contained in the definition will be a workman. If a casual labourer is employed in an industry for hire or reward, he will be a 'workman' within the meaning of Section 2(s) of the Act there is nothing in the definition of term "workman" which excludes a casual labourer. Hence it is enough that the workman permanent or temporary satisfies the provisions of Section 25B(2). Section 25B(2)(a) says "Where a workman is not in continuous services within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer has actually worked for not less than 240 days. Section 25B(2)(b) says "for a period of six months, if the workman, during a period of six calendar months, preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—". In this case, admittedly, the Petitioner has been in continuous service from 26-8-1983 till 30-4-1986. Hence the Petitioner can be retrenched only by following the conditions contained in Section 25-F of the Act. In this case, admittedly, a month's notice has been given under Ex. M-8 on 21-3-1986 that his engagement as casual driver will cease with effect from 30-4-1986 or one month from the date of receipt of this letter whichever is earlier. But the notice of one month is not the only condition to be complied with under Section 25-F. It is not in dispute the workman has not been paid the retrenchment compensation as per Section 25F(b). In as much as all the conditions covered under Section 25-F have not been complied with the order of termination is invalid and inoperative as per decisions of the Supreme Court. In this connection, in 1981-I-L.L.J. Page 363 (Ramani Mohan Industries Private Limited Vs. Second Industrial Tribunal and others), the Calcutta High Court has held :

"The provisions of S. 25-F is mandatory. If there is any non-compliance with the said provision, the order becomes illegal. If the order becomes illegal, then the position is as if there is no such order at all and in such a case such retrenchment cannot be given effect to at all in any manner whatsoever. If the retrenchment is in violation of S. 25-F, the employee concerned remains an employee and the question of awarding some compensation regarding his wages without granting reinstatement cannot and does not arise."

In 1981-I-L.L.J. Page 586 (Surendra Kumar Verma and others vs. Central Government Industrial Tribunal, New Delhi) the Supreme Court has held :

"Plain commonsense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement in the services of the workman. It is as if the order has never been and do it must ordinarily lead to back wages also. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and the workman to direct reinstatement with full back wages."

As against these decisions, the learned counsel for the Respondent-Management is not able to lay his finger on any

authority to disprove the contentions of the Petitioner. For these reasons, it has to be found the order of the respondent is not justified. This point is found in favour of the Petitioner.

9. Point No. 2.—Regarding the question of relief, it is the plea of the learned counsel for the Petitioner that the workman should be reinstated in service with back wages. In this case, admittedly, the Petitioner was employed only as a casual employee on ad hoc basis and obtained a declaration from him that he would not have any right over the post whether temporary or permanent. Further, the intimation of recruitment under Ex. M-3 categorically says that in addition to 11 candidates duly selected the following list of 5 candidates may be considered only in the event of drop outs of any of the regular 11 candidates selected as per the above list and this will not constitute any waiting list for future absorption. In exigency of service, these 8 candidates may be engaged purely to work on daily wage basis without conferring any right or claim on their part for regular absorption either immediately or in future. It is further on the representation given by the Petitioner, the Respondent forwarded the same to the Director of Postal Services who rejected the representation as per recruitment rules present and ban on filling up of vacancies. These facts would only show that the Petitioner was terminated from service without any mala fide intention. Therefore the retrenchment was inevitable. In this connection 1985-II-M.L.J. (Division Bench of Madras High Court) page 432 has been relied on by management. In that case, the question arose before High Court was: (1) Whether the Labour Court having held that the retrenchment is not mala fide but one which could be justified on the facts of this case, erred in directing reinstatement with full back wages. (2) Whether Labour Court is in error in awarding the relief of reinstatement with full back wages and that only an award of compensation is called for. The High Court held that it is not that in every case of infringement of Section 25-F, the award of reinstatement with back wages is a must by the Labour Court. In case where the management is found to be justified in effecting retrenchment and its decision to effect retrenchment is not mala fide, the Labour Court will be exercising its discretion properly if a suitable compensation in lieu of reinstatement with back wages is ordered. In that case, since the Labour Court granted relief of reinstatement with back wages, ignoring the fact that discretion is left with the Labour Court directing reinstatement with back wages and to award compensation instead. The order of Labour Court was set aside. Since the order of the learned Judge and also the award passed by the Labour Court were set aside the Labour Court was directed to pass fresh orders fixing suitable compensation in lieu of reinstatement for those four workmen. The above decision being a Bench decision of our High Court it is binding on this Tribunal. Therefore, in this case, since the retrenchment by the Management is not mala fide, the Petitioner is not entitled to be reinstated, but only entitled to retrenchment compensation.

10. Coming to the actual quantum of retrenchment compensation, no evidence was let in either oral or documentary on either side. He was in employment as a Driver Grade-C for a period of 2 years 8 months (26-8-1983 to 30-4-1986). A lump sum amount of Rs. 500 is fixed as retrenchment compensation. The Respondent-Management is directed to pay the compensation within a month from the date of publication of the award of this Tribunal. An award is passed according. There will be no order as to costs.

Dated, this 22nd day of September, 1988

K. NATARAJAN, Industrial Tribunal

[No. L-40012/30/36-D.II (B)]

WITNESSES EXAMINED

For both sides : None.

DOCUMENT MARKED

For workman :

Ex. W-1/21-1-83—Interview Notice issued to Thiru S. Thiruvallimarpan. (Xerox copy)

Ex. W-2/28-5-88—Letter from the workman addressed to the conciliation officer (copy)

Ex. W-3/24-9-86—Conciliation Failure Report (copy)

Ex. W-4/24-11-86—Letter from the workman to the Government of India.

For Management :

Ex. M-1/21-2-69—Letter from the Post Master-General, Madras Circle, Madras-2 addressed to the Management regarding Categorisation and Technical Staff.

Ex. M-2/18-7-83—Letter from the Management regarding recruitment of T. S. Driver (Gr. C) (Xerox copy)

Ex. M-3/—Note regarding recruitment of T. S. Drivers.

Ex. M-4/26-8-83—Letter from Management to Petitioner-Workmen and others regarding engagement of (Daily Wage Driver) (copy)

Ex. M-5/2-9-83—Letter from Petitioner-Workmen addressed to the Management.

Ex. M-6/13-84—Letter from Petitioner-Workman to the Management regarding recruitment of Drivers (copy)

Ex. M-7/19-2-86—Appointment order issued to the Petitioner-Workmen.

Ex. M-8/21-3-86—Letter from the Department to the Petitioners for removing the service (copy)

Ex. M-9/—Revised Recruitment Rules (copy)

K. NATARAJAN, Industrial Tribunal

का.पा. 3643:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल म्यूजियम आफ नैचुरल हिस्ट्री के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, सम्बंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.11.88 प्राप्त हुआ था।

S.O. 3643.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Museum of Natural History and their workman, when was received by the Central Government on the 17-11-88.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL,
NEW DELHI.

I. D. No. 57/86.

In the matter of dispute between :

Shri Madan Lal, House No. 465/3, Gah No. 2, Basal Road, Arjun Nagar, Gurgaon.

Versus

Administrative Officer, National Museum of Natural History, FCCI Building, Barakhamba Road, New Delhi.

APPEARANCES :

Shri I. L. Kalra for the workman.

Shri Narinder Chaudhary for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/26/D. II(B) dated 10-6-1986 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Management of National Museum of Natural History in terminating the services of Shri Madan Lal, Carpenter from July, 1983 is legal and justified? If not, to what relief the workman is entitled to?"

2. Some of the undisputed facts are that the workman Shri Madan Lal joined service of National Museum of Natural History, New Delhi as a daily rated Carpenter w.e.f. 28-5-76 and his services were terminated w. e. f. 30-6-1983 without any notice, charge sheet or enquiry and without payment of wages in lieu of notice or any retrenchment compensation.

3. The case of the workman is that a person junior to him namely Jagroshan was retained in service and later on appointed on a regular basis and the action of the Management in terminating his services without serving any notice on him and without making payment of wages in lieu of notice and retrenchment compensation, is illegal and unjustified. Hence he has sought his reinstatement with continuity of service and with full back wages.

4. The Management has contended that the National Museum of Natural History is a subordinate office of the Department of Environment, Ministry of Environment and Forests and it is not an 'Industry'. It has further been pleaded that the workman was engaged as a casual labour on daily wages and as his services were no longer required, he was discharged w.e.f. 30-6-83 and since he was not a regular employee it was not necessary to give him any formal notice of termination. The Management subsequently in a written note dated 5-10-87 stated that Shri Jag Roshan was also engaged as Carpenter on daily wages during the months of May/June, 1976 and on the recommendations of the Departmental Selection Committee, he was appointed on a regular basis w.e.f. 19th November, 1977.

5. First of all it may be examined as to whether the National Museum of Natural History is an 'Industry' or not. Dr. S. M. Nair, Director of the Museum who appeared as MW-1 has stated that they have an organisation and they have got exhibits which are of permanent nature and they also have permanent exhibitions open to the public at large. They carry on educational activity to educate the children, teachers and public about Natural History and Environment. These activities of the Museum fully satisfy the triple test of Industry as laid down in Bangalore Water Supply and Sewerage Board Vs. A. Rajanappa and others AIR 1978 Supreme Court 548 = 1978 Lab. I. C. 467 wherein it was held as under :

"Industry" as defined in S. 2(j) has a wide import.

Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or 'food') prima facie, there is an "Industry" in that enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Although S. 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to ever reach itself.

"Undertaking" must suffer a contextual and associational shrinkage as explained in AIR 1953 SC 58 so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements above mentioned, although not trade or business may still be "industry" provided the nature of the activity viz., callings and services adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity viz., in organizing

the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

The consequences are (i) professions, (ii) clubs (iii) educational institutions co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed above, cannot be exempted from the scope of S. 2(j)."

6. The Management itself has placed on record a copy of the letter dated 18-7-85 addressed by the Ministry of Labour to the Ministry of Environment and Forests Department of Environment wherein the Ministry of Environment itself has recorded a note in the margin that the Museum is an 'Industry' under the Industrial Disputes Act as it satisfies the triple test of Industry laid down in the Bangalore Water Supply and Sewerage Board case. Hence I have no hesitation in holding that the National Museum of Natural History is an 'Industry' within the meaning of Section 2(j) of the I.D. Act (hereinafter referred to as the Act). The second contention of the Management that as the workman was employed as casual labour, the provisions of I. D. Act are not applicable to him is wholly fallacious because the Industrial Disputes Act does not make any distinction between the regular workers and casual workers and it is applicable to all categories of workmen, including casual labour, if they are covered within the definition of workman as given in section 2(s) of the Act. Therefore, the Industrial Disputes Act is fully applicable to the National Museum of Natural History as well as to the workman.

7. On merits the Managements has taken a contradictory stand. On the one hand it has pleaded that the services of the workman were retrenched as they were no longer required and on the other hand it has been stated that after the work of the claimant has been specified as satisfactory in August, 1981 his performance as Carpenter was found totally unsatisfactory and ultimately his services were dispensed with. If the services were terminated on account of unsatisfactory performance the workman should have been charge sheeted and given an opportunity to defend himself which was not done. Therefore, the action of the Management in resorting to termination simpliciter amounted to unfair labour practice. The contention of the Management that the services of the workman were retrenched as there was no work does not carry weight because MW-1 Dr. S.M. Nair has stated that they have a carpentry Unit where some machines are installed like lathe and saw for carpentry use. Further, they were developing a gallery in which wooden show cases are prepared. Moreover, by not supplying the exact date of appointment of Shri Jag Roshan who admittedly had been appointed on regular basis, it is tacitly admitted that a person junior to the workman has been retained in service. This action at the same time confirms that there was work for a Carpenter which is signified by the continuance and regularisation of the services of Jag Roshan. The Management has also failed to comply with the mandatory provision of section 25-F of the I. D. Act. The Management is also guilty of violation of the provisions of section 25-G of the Act for not following the principle of last come first go.

8. In view of the discussion made above this reference is answered in favour of the workman and against the Management and it is held that the action of the Management in terminating the services of Shri Madan Lal from July, 1983 is illegal and unjustified. It is, therefore, directed that the workman shall be reinstated with continuity of service and with full back wages. This reference stands disposed of accordingly.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Government for necessary action at their end.

4th November, 1988.

G. S. KALRA, Presiding Officer

[No. L-42012/26/85-D, II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 29 नवम्बर, 1988

का.प्र. 3644—औद्योगिक विवाद प्रशिक्षण, 1947 (1947 का 14) को धारा 17 के अनुसूच में, केन्द्रीय सरकार बैंक ऑफ बरोडा के व्यवस्थापक के द्वारा निराकरण और उनके कर्मचारियों के बीच, अनुसूच में निर्दिष्ट आयोग के विचार में औद्योगिक प्रतिक्रिया, हैदराबाद के पञ्जाब का प्रकाशन करता है, जो केन्द्रीय सरकार का प्रेषण हुआ था।

New Delhi, the 29th November, 1988

S.O. 3644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Dated 17th October, 1988

Industrial Dispute No. 65 of 1987

BETWEEN :

The Workmen of Bank of Baroda, Hyderabad.

AND

The Management of Bank of Baroda, Hyderabad.

APPEARANCES :

Sri A. V. Krishna Rao, Advocate—for the Workmen.
Sarvari K. Srinivasa Murthy, P. Dhannayya,
Kumari G. Sudha and A. Visalakshmi, Advocates
—for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/589/86-D, II(A) dated 3-12-1987 referred the dispute under Section 17(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employer in relation to the management of Bank of Baroda and their workmen to this Tribunal for adjudication :

“Whether the action of the part of the management of Bank of Baroda in dismissing the services of Sri V. Anjaneya Sarma, Ex-Cashier w.e.f. 17-7-1985 is legal and justifiable. If not, to what relief the workman is entitled ?”

This reference was registered as Industrial Dispute No. 65 of 1987 and notices were issued to both the parties.

2. The claim statement filed by the workman is a very elaborate document which sets out not only his claims but also the arguments advanced for each point, the claimant tries to make out and it also sets out contents of the numerous documents that are referred to in the enquiry proceedings. In addition to that to the claim statement are enclosed Annexures 1 to 12 and Annexures 13(a), 13(b),

13(c) and 13(d) which relate to the dispute raised before the Assistant Commissioner of Labour and the Regional Labour Commissioner and conciliation proceedings that took place in this connection. Annexure 13(e) is the minutes of the conciliation proceedings that took place on 13-10-1986. Annexure 13(f) is the failure report submitted by the Assistant Commissioner of Labour to the Government of India. It would be unnecessary to set out in detail the lengthy claim statement which almost reproduces many of the contents of the Annexures and also indicates the claimant's arguments. I shall only set out in a very brief manner the essential points of the claim statement. The workman Sri V. Anjaneya Sarma was employed as Shroff/ Godown Keeper on 21-10-1969 in the Bank of Baroda. Subsequently he became Head Cashier. And from September 1981 till the date of dismissal dated 17-7-1985 he was working as Head Cashier at Barkatpura Branch of the Bank. During the 15 years of his service he worked in an honest and sincere manner and he was responsible for excellent customers service. The management recognized and appreciated his work. The workman issued four cheques amounting to Rs. 4,500.00 to persons in out-station who were working in the Branches of the Bank at a time when he had no sufficient funds in the Saving Bank Account. When these cheques were returned to Barkatpura Branch he did not have funds in his account. Therefore, he collected these cheques and preserved them safely along with the schedules. He never had any bad motive in keeping the cheques with him. His only intention was to have the cheques honoured as early as possible after he could get the required money. On 28-3-1983 the Branch Manager enquired from the workman about these cheques. The workman explained the facts and circumstances without concealing anything and assured him of immediate clearance. He also confirmed by writing a letter dated 28-3-1983 what he had explained to the Branch Manager. The letter is Annexure 1. The workman cleared the cheques on 23-3-1983 and 28-3-1983. The Branch Manager accepted the workman's explanation and sent his report Annexure 2 to the Regional Manager. In that report, the Branch Manager recommended that a lenient view should be taken, considering his past and honest, sincere service and blemishless record. The Branch Manager also mentioned in that report that the workman had no intention to defraud the Bank; and that he had no intention to implicate anybody else in any trouble. Mentioning the pathetic conditions of his family which is a respectable family, he recommended that a lenient view should be taken. The Regional Manager issued a charge sheet on 14-11-1983 and it was served on the charge sheeted employee on 18-11-1983. The charge sheet contains two charges under Clause 19.5(j) and 19.5(d) of the Bipartite Settlement. The charge sheet was served under Annexure 3 and the charge sheet is Annexure 3(a). Sri Lakshminathan, Enquiry Officer conducted the enquiry on 16-7-1984. Sri R. S. Shankararayan, Officiating Branch Manager was the only witness examined for the management. Eleven documents produced by management were marked ME 1 to 11. Sri P. Vivekanand Rao assisted the charge sheeted employee in the enquiry. The deposition of Shankararayan is Annexure 4. In the evidence he reiterated what he wrote in his report Annexure 2. The enquiry was concluded on 16-7-1984 itself. The Presenting Officer and defence representative submitted their respective written arguments. They are Annexures 5 and 6. The Enquiry Officer submitted his report (Annexure 7) on 31-12-1984 and he found the charge sheeted employee is guilty of both the charges under Clause 19.5(j) and 19.5(d) of the Bipartite Settlement. The workman humbly submits that there are serious infirmities in the findings of the Enquiry Officer. There are errors apparent on the face of the record. The findings are perverse and against the evidence. The Enquiry Officer did not apply his mind. He acted as a prosecutor-judge rolled into one, he did not conduct himself in judicious manner. The Enquiry Officer failed to give importance to the fact that in the case of another official of the Bank, who had drawn for himself Rs. 4,000.00 without any fund in his account. No action was taken against him. In such circumstances to find the present workman guilty amounts to discrimination. The principle of natural justice required that there should be fair and judicial determination on questions. This was not done by the Enquiry Officer. The disciplinary authority accepted this report which is most unacceptable in law and issued a show cause notice Annexure 8. Under this show cause notice the workman was given an opportunity for personal hearing on

7-5-1985 at the Regional Office. On 7-5-1985 the workman appeared before the Disciplinary Authority and submitted his representation Annexure 9 and also submitted his oral submissions before the Disciplinary Authority. On 13-7-1985 the Disciplinary Authority passed final orders dismissing the employee with immediate effect. The final order is Annexure 10. The Disciplinary Authority did not apply its mind and it mechanically accepted the enquiry report and the findings of the Enquiry Officer. The order of the disciplinary authority is bad in law for the various grounds given in Clauses (a) to (i) of Paragraph 29 of the claim statement. It is also vulnerable for attack on the ground that this workman is discriminated against while no action was taken against similarly placed employee. The order passed by the Disciplinary Authority is unjust, unfair, arbitrary and illegal.

3. Aggrieved by the order of the Disciplinary Authority, the charge sheeted employee filed an appeal to the Assistant General Manager. The appeal is Annexure 11. The Appellate Authority without applying its mind mechanically rejected the appeal by its order dt. 7th November 1985 which is now enclosed as Annexure 12. The order of the Appellate Authority is bad and unsustainable in law for the various reasons given in Clauses (a) to (i) of paragraph 33 of the claim statement. The appellate order is unjust, unfair and illegal. It is arbitrary and opposed to principles of natural justice. It is liable to be set aside.

4. This Honorable Tribunal may be pleased to hold that the dismissal of the charge sheeted employee is illegal and unsustainable and to set aside the order of dismissal which has been upheld by the Appellate Authority and direct reinstatement of the workman with continuity of service and full back wages and other consequential benefits.

5. The counter filed on behalf of the Respondent Management merely consists of—The various allegations in the claim statement are not correct and twisted versions are given to suit the needs of the petitioner. The petitioner is put to strict proof of all the allegations. Sri V. Anjeneya Sarma was recruited in the Clerical Cadre on 21-10-1969 and he was assigned the duty of Head Cashier 'C' Category at Barkatpura branch with effect from 24-8-1981. The allegation that during the 15 years of service, he discharged his duties sincerely and honestly is not correct. His claim that he never gave any occasion to the management to point out any lapses on his part is not correct. While this charge sheeted employee was working at Barkatpura branch there was a cash shortage of Rs. 15,700.00 which was detected at the time of counting the cash on 31-12-1984 in the presence of Workman, Manager, Accountant and two other officers. Sri V. A. Sharma slipped out of the Branch and handed over the cash keys to the Peon of the Branch outside the Branch premises and then absconded. Subsequently he was arrested by the Police on 27-2-1985 and remanded to judicial custody. Later he obtained bail from the Metropolitan Sessions Judge. Regarding that misconduct, criminal case 2585 is pending on the file of the 17th Metropolitan Magistrate, Secunderabad. The allegation that he is having unblemished record is not at all correct.

5. The charge sheeted employee issued four cheques on 20-12-1982, 20-1-1983, 16-1-1983 and 15-1-1983 for a total value of Rs. 4,500.00 in favour of four staff members of outstation branches at Kakinada, Hukumpeta and Vijayawada. The outstation branches produced the said cheques on behalf of their staff members on 24-12-1982, 22-1-1983, 20-1-1983 respectively. In the normal course these cheques were sent for realisation and they could not realise the cheques by debiting to the account of Sri V. Anjeneya Sarma. As Anjeneya Sarma stealthily removed the cheques from the daily mail and kept them in his illegal custody till the reminders came from outstation branches. The material facts of the case have been stated in a twisted manner to cover his misconduct. He issued the cheques without having cash balance in his account. It is nothing but a criminal breach of the trust. As a Bank employee he is fully aware that he is not expected to issue cheques to third parties without having balance in his account. The acts of the petitioner-workman are detrimental to the interest and reputation of the Bank. Subsequently he gave a representation to the Manager and assured that he would clear all the cheques. This is nothing but an excuse, to save himself from criminal misconduct. The clearing of the

amount on 23-3-1983 and 28-3-1983 does not exonerate the workman from his misconduct. The clearing of the amount is only discharge of his obligation to the persons to whom he issued the cheques. His stealthily removing the cheques and schedules and withholding documents is an illegal act, done by the workman misusing his official capacity. The charge sheeted employee submitted his written explanation and confessed his guilt. The report was sent to the Regional Manager along with the usual recommendation of the Branch Manager. The Regional Manager being the Disciplinary Authority who has to maintain discipline in the Bank is not bound by the recommendation of the Branch Manager. He is empowered to look into the matter and decide whether disciplinary action should be initiated or not. The claim of the worker that he is sincere and cooperative worker responsible for excellent customers service in the cash department is not at all correct. When the shortage of cash was discovered, the petitioner admitted the discrepancy. When he disowned responsibility and absconded from service. His brother Durga Prasad came and paid the cash in the Branch. The documents and letters and undertakings given at that time clearly indicate the conduct of this petitioner. The allegation that the workman had no intention to defraud the Bank or implicate any one is not correct. Being the Bank employee working in Cash Department he is expected to conduct himself in an honest and upright manner. His family background has nothing to do with his conduct or misconduct and the crimes committed by him. It is true that the Regional Manager initiated disciplinary action and issued charge sheet dt. 14-11-1983 in spite of giving a fair opportunity for reasons not known to himself. The charge sheeted employee did not submit his explanation. Sri Lakshmanan was appointed as Enquiry Officer and he conducted the enquiry on 16-7-1984. The Management representative conducted the case and Sri Shankaranarayan was examined as M.W-1. Documents were produced before the Enquiry Officer. The charge sheeted employee was assisted by P. Vivekanand Rao. The proceedings of the domestic enquiry and the report of the Enquiry Officer may be read as part and parcel of this counter.

6. In the claim statement only portions of the deposition of the witness which are favourable to the Petitioner are mentioned in a twisted form. The claim statement is nothing but a repetition of the written arguments and ordered to expunge away every fact that is established against him. The disciplinary authority considered the record of the enquiry and the enquiry officers report and after giving a show cause notice and obtaining his explanation after thorough consideration passed the orders dt. 17-7-1985 dismissing the petitioner from service. The allegation that the Enquiry Officer's report is incorrect and that the findings are patently wrong and that they are perverse is baseless. It is wrong to allege that the Enquiry Officer did not observe the principles of natural justice. The petitioner has gone to the extent of attributing mala fides to the Enquiry Officer and the petitioner has now impeached the validity of the domestic enquiry. That point may be decided as a preliminary issue. If for any reason the Tribunal comes to the conclusion that the enquiry is vitiated, the Management may be given an opportunity to establish its case by leading evidence in this Tribunal. It is respectfully submitted that the Enquiry Officer's report is perfectly valid and that the findings recorded by him are based upon material and acceptable evidence. The Disciplinary Authority after elaborate consideration passed the final orders. It is not correct to say that the Disciplinary Authority did not apply its mind and blindly accepted the enquiry officer's report. The explanation given by the charge sheeted employee to the shown-cause notice was also considered and then final orders were passed in an elaborate manner.

7. The order passed by the Disciplinary Authority is perfectly valid and it is perfectly justified on the facts of the case. As the Bank lost confidence in the employee and as his credibility is very much in doubt, the punishment of dismissal is the proper punishment. The acts of the charge sheeted employee are such that they would bring down the reputation of the Bank. It cannot be said that the punishment of dismissal is grossly and shockingly disproportionate to the gravity of the misconduct committed by the delinquent. The allegation that he has been singled out and discriminated is not correct. The case of V. D. Rao is totally different from the case of the present charge sheeted employee.

8. The Appellate Authority considered the appeal in great detail and passed an elaborate reasoned order. The appellate authority is perfectly justified in upholding the order passed by the Disciplinary Authority. This is not a case in which Section 11-A would apply. The Petitioner is not entitled to any relief in this dispute, as it is a case of gross misconduct. The punishment of dismissal is proper and in the conciliation proceedings the Management did not agree for voluntary arbitration considering the gross misconduct of the delinquent. If the Petitioner files an additional statement, the Management may be permitted to file additional counter. Considering the various circumstances mentioned above, the Tribunal may be pleased to dismiss the petition and confirm the order of dismissal passed by the Management.

9. After the counter has been filed, the workmen filed rejoinder which briefly reads as follows :—The counter is without any substance and suffers misstatement of facts. It is failed to raise points worthy of consideration except denying the claim statement. Alleged incident of shortage of cash is stated to have taken place long after the conclusion of the enquiry proceedings. It is unrelated, irrelevant and unestablished. It cannot be taken into consideration in this proceedings. The recommendation of the Branch Manager are not binding on the Regional Manager but having regard to the fact or these recommendations of the authority on the spot, the Disciplinary Authority, the Regional Manager should take them into consideration determining while the quantum of punishment. As incident of alleged shortage of cash is now subjudice and the case is pending, it is not proper for the Management to raise it in this proceedings. The alleged detection of shortage on 31-12-1984 the day on which the Enquiry Officer submitted his report is not a mere co-incidence but it is an attempt on the part of the Management to somehow get rid of the employee and dismiss the workman. As the Management felt that there are no grounds to dismiss the workman, they have thought of this alleged shortage of cash on 31-12-1984. The charge sheeted employee concealed and preserved the cheques safely with a view to meet them when he could credit cash in his S.B. Account. Infact all these facts were explained to the Branch Manager and the amounts were cleared on 23-3-1983 and 28-3-1983. There is no criminal breach of trust nor is there any criminal intention. The acts of the workmen are not detrimental to the interest of the Bank nor it caused damage to the interest of the Bank. The act of withholding the documents is not illegal as the cheques were preserved with good intention to honour them. The workman was not given an opportunity to submit his written explanation before the enquiry was ordered. The charge sheeted employee admits that proper opportunity was given at the time of enquiry and infact this was acknowledged in the written arguments submitted on behalf of the workman. This workman only disputes the findings of the enquiry officer and the orders of disciplinary authority. The conclusions arrived at by the Enquiry Officer are perverse and they are not based on objective assessment. The disciplinary authority did not apply his mind and the non-application of the mind offends the principles of natural justice. The allegation that the material facts which have come to light in the domestic enquiry was not correctly appreciated in these proceedings. The Management witness clearly exonerated the workman from both the charges levelled against him. This was not given proper weightage by the enquiry officer or the disciplinary authority. The Appellate Authority also did not appreciate the facts and the evidence in the proper perspective. The order of dismissal dt. 17-7-1985 is not in accordance with the principle of law.

10. The disciplinary authority has treated the enquiry as an empty formality. He was influenced by his personal views and opinions. In coming to the conclusion that the acts of the workman are fraudulent in nature and they were dishonest in character. The charge sheet never alleged dishonesty or fraudulent intention. The allegation of the counter that if the same act is done by the workmen to outsider the bank would have lost credibility and public confidence is purely hypothetical and imaginary. If the disciplinary authority correctly appreciated the facts and paid attention to the norms of punishment, he would not have imposed grossly and shockingly disproportionate punishment of dismissal. The Appellate Authority was more influenced by the enquiry report and did not apply his mind to the facts of the

case. Hence the appellate order is bad in law. The petitioner is entitled to be reinstated with continuity of service and full back wages and other consequential benefits. At any rate this is a fit case where the Tribunal should exercise its power under Section 11-A of the I.D. Act to set aside the order of dismissal and impose if necessary lesser punishment. The dismissal is illegal and unjustified. The order of dismissal as confirmed by the appellate authority may be set aside.

11. On the basis of the above pleadings the following points arise for consideration :

- (1) Whether the domestic enquiry has been conducted in accordance with the principles of natural justice giving adequate opportunity to the delinquent to defend himself ?
- (2) Whether the order of dismissal dt. 17-7-1985 is legal and justifiable ?
- (3) Whether this is a fit case in which the Tribunal should invoke its powers under Section 11-A of the I. D. Act and impose a lesser punishment in lieu of dismissal ?

12. Point 1 :—Though at several places in the claim statement and in the rejoinder, the workman mentioned that the enquiry is not conducted in accordance with the principles of natural justice; This allegation is a most baseless allegation because in the very written arguments given to the enquiry officer namely Ex. M-20 the defence representative expressed his sincere thanks to the enquiry officer for the fair and reasonable opportunity given to them to defend against the charges framed against V. Anjaneya Sarma. Apart from the defence representative himself admitting that the enquiry conducted in a fair and impartial manner giving reasonable opportunity to defend the charge sheeted employees. The record of the enquiry clearly shows that the enquiry was conducted in strict accordance with principles of natural justice. A reading of Ex. M-16 the proceedings of the enquiry clearly reveals that the enquiry has been conducted in strict accordance with the principles of natural justice and the delinquent was given more than ample opportunity to defend himself. He was ably defended by his defence representative. Infact the management witness also spoke several facts in his favour. All these things are clear from a reading of Ex. M-16, the proceedings of enquiry and Ex. M-22 the report of the enquiry officer. It is most unjust on the part of the workman to now alleged that the domestic enquiry is not in accordance with the principles of natural justice.

13. In the rejoinder, the workman seems to make amends for the numerous allegations made by him in the claim statement and claims that the enquiry was conducted in a fair and reasonable manner in accordance with the principles of natural justice. But the conclusions drawn by the enquiry officer are perverse and hence his enquiry is against the principles of natural justice. Reading the proceedings of enquiry Ex. M-16 and the report of enquiry Ex. M-22 and the numerous exhibits that have been produced before the Tribunal, I find that the conclusions drawn by the Enquiry Officer are perfectly correct and that they are based upon the material evidence placed before him. Infact the delinquent himself admitted his guilt at different points of time.

14. Ex. M-2 is the letter given by him to the Branch Manager on 28-3-1983. In this he categorically admitted that he issued four cheques without his having any cash balance in his S.B. Account. He also admits that he knew that the cheques issued by him were taken in B.P. by the persons in whose favour he issued the cheques. He further admits that he was observing the post and took away instruments together with their schedules but he claims that he took them away and preserved them so that he could make credit entry into his account and then honour them. He made a clean breast of the entire case when the Manager questioned him on 23-3-1983 regarding the two cheques issued to an employee of Bank at Kakinada. On 23-3-1983 he deposited Rs. 2,000.00 and saw to it that these two cheques were honoured. Subsequently on 28-3-1983 when the acting Manager again questioned him whether there are other cheques of this type with him, then he mentioned about his removing from the tappis the cheques and the Schedules which he issued in the name of P. Appa Rao and C. Venugopal respectively of Hukumpeta and Vijayawada on the very

same day he made good the money and the cheques were paid. In Ex. M-2 he categorically stated that he is making genuine confession voluntarily and that is confession may be taken into account and a lenient view may be taken. Infact Ex. M-2 was enclosed to Ex. M-1 report submitted by the Acting Manager to the Regional Manager. Ex. M-1 also indicates all these facts, in the course of the proceeding also the charge sheeted employee admitted these facts. Infact even the written arguments submitted on behalf of the defence these facts are omitted. It is only claimed that the mention of V. Anjeneya Sharma are not fraudulent and that he had no criminal intention. It is claimed that Anjeneya Sharma never entertained the intention of destroying the instruments nor did he have any intention to put any others in trouble. It should be remembered that in a case of this type where the delinquent admitted his guilt conducting a domestic enquiry is a superfluity and an empty formality. In 1967 (II) LLJ, page 739 (Central Bank of India v. Karunamoy Banerjee) lays down the law as follows :—"But if the workman admits his fault to insist upon the management to let in evidence about the allegation will only be an empty formality". In the present case conducting enquiry was a superfluity and the enquiry was conducted in strict accordance with the principles of natural justice. I hold Point 1 in favour of the management.

15. Point 2 :—Sri Krishna Rao appearing for the workman contends that as the delinquent did not destroy the cheques which were removed by him and as he honoured the cheques though belated he should be exonerated. He contends that there is no misconduct on the part of the delinquent. I am unable to accept the contention of Sri Krishna Rao for various reasons. It should be remembered that the charge sheeted employee is an employee of the Bank and knowing fully well that he has no money to his credit in the S.B. Account. He issued four cheques namely Ex. M-8 dated 16-1-1983, Ex. M-9 dated 16-1-1983 to C. Venugopal and P. Appa Rao Bank Officials at Vijayawada and Hukumpeta. He issued Ex. M-10 dated 20-1-1983 and Ex. M-11 dated 20-12-1982 to M. V. K. A. Vedantha Chary a Bank Official at Kakinada. Ex. M-7 the copy of his Bank account clearly shows that at the time of his issuing the cheque in December he was having only Rs. 0.54 paise to his credit in the Bank account. When he issued the cheques dated 15-1-1983 and 16-1-1983 he had only Re. 1.04 paise in his account. It is quite clear that this witness deliberately issued cheques fully knowing that he has no amount to his credit in his account. He also admits that these cheques were taken as B.Bs. under various Branches and he was watching the tappals that were received by the Bank and he stealthily removed them. His stealthily removing the cheques and the schedules attached thereto is a very very serious misconduct on the part of the Bank employee. The banks which deal with finances of the public expect that the Bank employees would conduct themselves with utmost faith and integrity. Being a Cashier he has nothing to do with receiving tappals. He abused his official position and stealthily removed the cheques when they were received alongwith their respective schedules. He did not make any effort to credit the amount in his account immediately. After he removed them. Only when he was confronted by the Acting Manager on 22nd March he has admitted his removing two cheques which were the subject of enquiry from the Kakinada Branch and he was scrupulously silent about the other cheques which also be removed and kept them clandestinely with him. For the second time when the Acting Manager questioned him on 28th March then he admitted the cheques which were received from Vijayawada Branch and Hukumpeta Branch. The conduct of the delinquent clearly indicate that he has done the whole thing in a most well planned manner and intentionally. Reading the entire record. I have a feeling that this is a case where the delinquent pleads that he is the thief alright but as he is a honest thief so he should be excused. This sort of behaviour on the part of the Bank employee who deals with public money is most atrocious. In my opinion his stealthily removing the cheques received from Kakinada and Hukumpeta and Vijayawada branches together with their schedules from the tappals is the most serious crime that he has committed. In abused his official position and did these things. Even if we ignore his issuing cheques without there being cash balance in his account under no circumstances can he be excused for his stealthily removing the cheques along with their schedules by keeping a close watch on the inward tappals. It is crystal clear that his intention was to see that these cheques do not

reach the Ledger Clerk. He prevented their being on cashed for more than 1½ months. What the delinquent has done is a very serious misconduct which squarely comes within the gross misconduct defined under Clause 19.5 (d) of the Bipartite Settlement. Wilful damage or attempt to cause damage to the property of the Bank or any of its customers, has caused loss of interest and as his action undermine the confidence of the customers in the Bank. His act also comes within the definition of gross misconduct mentioned in Paragraph 19.5 (j) of the Bipartite Settlement doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving in serious loss.

16. The Acting Manager who first detected the fraud and the mischief committed by the delinquent gave Ex. M-2 report to the Regional Manager but at the same time he seems to be having lot of sympathy for the delinquent, concealing his family circumstances. In my opinion the recommendation made by the Acting Manager in Ex. M-2 to take a lenient view in this case, is an instance of misplaced sympathy. Even at the stage of evidence in the domestic enquiry the Acting Manager made several statements favourable to the delinquent. It looks as if he has a soft corner for the delinquent.

17. As rightly pointed out by the Advocate for the Management, the disciplinary authority is not bound by the recommendations of the Acting Manager. Considering the entire material in Ex. M-2 and the confession letter Ex. M-1 given by the charge sheeted employee the Regional Manager the disciplinary authority rightly ordered an enquiry. The enquiry Officer also after conducting a very fair and impartial enquiry came to the correct conclusions on the basis of evidence placed before him. In cases of this nature where the credibility of the Bank suffers and the confidence of the public is shaken, by the acts of the delinquent bank employee condign and deterrent punishment is proper. No sympathy can be shown in cases of this type. The enquiry officer in his report Ex. M-22 brought the statement given by the Acting Manager in favour of the delinquent to the notice of the disciplinary authority as the disciplinary authority is the proper functionary who has to examine into mitigating and aggravating circumstances. The disciplinary authority accepted Ex. M-22 report and issued Ex. M-23 show cause notice. This clearly indicates that the disciplinary authority carefully examined the proceedings of the enquiry, the exhibits and evidence and the findings of the enquiry officer and then proposed punishment of dismissal without notice on each of the charges. He gave opportunity to the delinquent to represent his case against the proposed punishment and he even gave him a personal hearing. Ex. M-24 clearly indicates that a personal hearing was given to the delinquent on 7-5-1985 and on the same day the delinquent gave Ex. M-25 wherein he again admitted his lapses and pleaded for sympathy on the ground that he has a mentally retarded sister who had been under treatment for a long time, and that his family circumstances were such that he could not raise the funds to honour the cheques in time. He only pleaded for mercy in Ex. M-25. The Disciplinary Authority considered the entire record of enquiry and the statement given to him in the personal hearing and Ex. M-25 and then passed the final order Ex. M-26 on 17th July, 1985. The final order Ex. M-26 is a well reasoned order. Ex. M-27 the appellate order dated 7th November, 1985 is also an elaborate well considered order which took into consideration all the facts and circumstances of the case and the entire records. There is absolutely no basis for finding fault with Exs. M-26 and M-27 orders.

18. In my considered opinion for the gross misconduct indulged in by the delinquent who is a Bank employee who has stealthily and clandestinely removed records from the Bank by observing the inward tappals is certainly guilty of grave and serious misconduct and for such gross misconduct the punishment of dismissal is perfectly justified. Simply because he comes from a respectable family and simply because his prior conduct was good it does not mean that his guilt can be wiped away or condoned.

19. It should also be remembered that during the pendency of this enquiry proceedings a much more serious thing came to light. The enquiry officer who was located at

Madras wrote the report Ex. M22 on 31st December, 1984 and on the same day the Bank detected shortage of cash of Rs. 13,700.00 and this delinquent coolly slipped out of the Branch and handed over the cash keys to the Peon of the Branch outside the Branch Premises and then absconded. He was ultimately arrested by the police on 27th February, 1985. It should be remembered that before the proceedings concluded this delinquent committed a grave crime. Now as a criminal case is pending against him for the shortage of cash, I do not wish to make any observations. While judging the quantum of punishment just as we considered his past good conduct, his subsequent grave misconduct should also be taken into account. It looks as if due to financial difficulties of the family this delinquent started pilfering cash from the Bank and did various things to secure funds. Taking this particular fact also into consideration the imposition of the punishment of dismissal is perfectly justified. I hold point 2 in favour of the Management.

19. Point 3.—Sri Krishna Rao urged before me that in this case taking into account the recommendation of the Acting Branch Manager and his statement in the domestic enquiry mercy should be shown to the delinquent and that the gross misconduct does not warrant the extreme penalty of dismissal. He contends that this is a fit case in which Section 11-A of the I.D. Act should be invoked and the Tribunal should set aside the order of dismissal and instead impose a lesser punishment. He places strong reliance upon the decision reported in 1983(1) S.C.R. page 648 (RAMAKANT v. U. P. STATE). In this decision the Supreme Court dealt with the scope of Section 11-A and observed as follows:—"The words that the Court must be satisfied that the order of discharge or dismissal was not justified occurring in Section 11-A indicate that even though misconduct is proved and penalty has to be imposed the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case and the Court should see whether the punishment is disproportionately heavy or excessive". The Court in that decision was dealing with a case of appellant workman with a clean record of 14 years service being found guilty of using abusive language and threatening language to a senior officer. The Court observed at page 653 as follows:—"Before we can exercise discretion conferred by Section 11A the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. The extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was neither disproportionately heavy or excessive. As stated earlier, it is a well recognised principle of jurisprudence which permits penalty to be imposed for misconduct, that the penalty must be commensurate with the gravity of the offence charged. Then after dealing with the facts of the case and his past service record the Court observed as follows:—"He had put in 14 years of service. He was Secretary of the Workmen's Union. The respondent-Management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years service he rendered prior to the date of misconduct and the misconduct consists of using abusive language indiscreet, improper or disclosing a threatening posture. "When it is said that any thing discloses threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet improper abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere. Then the Court set aside the order of dismissal and reinstated him and imposed a penalty of withholding of two increments with future effect.

20. The facts of the present case are totally different from the facts of that particular case. Here is the case where the Bank employee who is expected to conduct himself in an honest and upright manner has deliberately and in a planned manner tampered with the records and clandestinely removed the cheques that were received in the inward tappals. Only when he was caught he came out with the documents. The action of the delinquent is one which would shake confidence

of the public in a Banking institution. I feel that this is not a case in which Section 11-A can be invoked. As observed earlier the gross misconduct is one which deserve condign and deterrent punishment. I am fully convinced that the order of dismissal is perfectly justified. Section 11-A cannot be invoked in this case.

21. In this case Sri Krishna Rao placed reliance upon several decisions namely in 1969 (1) S.C.R. page 735 (Central Bank of India Ltd. New Delhi v. Shri Prakash Chand Jain), AIR 1959 S. C. page 529 (M/s. Burn & Co. v. Their Workmen) 1979 L&IC page 699 (Kul Bhushan v. Punjab National Bank) 1957 S.C. Page 7 (L.D.S. Mills Ltd. v. Nand Kishore Singh) 1985 S.C. Page 163 (Shankar Dass v. Union of India). The principles enunciated in these decisions are not at all applicable to the facts of our case. These decisions deal with different principles applicable to industrial law. They are not applicable to the facts of our case. It is unnecessary for me to discuss these decisions in detail as they are not at all applicable.

22. In the result, I answer the reference as follows: The action of the Management of Bank of Baroda in dismissing from services of V. Anjaneya Sharma, Ex-Cashier with effect from 17th July, 1985 is legal and justified. The workman is not entitled to any relief in this industrial dispute.

Award is passed accordingly.

(Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 17th day of October, 1988).

D. J. JAGANNADHARAJU, Industrial Tribunal

[No. L-12012/589/86-D. II(A)]

Appendix of Evidence

Witnesses Examined
for Workmen :
NIL

Witnesses Examined
for Management:
NIL.

Documents marked for the Workmen
NIL

Documents marked by the Management by consent.

- Ex. M1 Letter No. STF/12/42 dated 29th March, 1983 addressed to Regional Manager, A. P. Branches, Bank of Baroda by the Acting Manager, Barkatpura Branch, Hyderabad reporting the incident.
- Ex. M2 Letter dated 28th March, 1983 addressed to the Manager, Bank of Baroda by the Disciplinary Authority.
- Ex. M3 Charge sheet dated 14th November, 1983 issued to V. Anjaneya Sharma by the Disciplinary Authority.
- Ex. M4 Order dated 14th November, 1983 issued by the Disciplinary Authority appointing A. R. Lakshmanan as the Enquiry Officer.
- Ex. M5 Order dated 18th February, 1984 issued by the Disciplinary Authority appointing S. B. G. Sarma as the Presenting Officer.
- Ex. M6 Notice of enquiry dated 23rd May, 1984 issued to V. Anjaneya Sharma by the Enquiry Officer.
- Ex. M7 Statement of S.B. A/c. 4413.
- Ex. M8 Cheque No. 0060257 dated 15th January, 1983 for Rs. 1,500.00 along with voucher copy dated 28th March, 1983.
- Ex. M9 Cheque No. 0060258 dated 16th January, 1983 for Rs. 1,000.00 along with voucher copy dated 28th March, 1983.

- Ex. M10 Cheque No. 0060260 dated 20th January, 1983 for Rs. 1,000.00 along with voucher copy dated 23rd March, 1983.
- Ex. M11 Cheque No. 0060247 dated 20th December, 1982 for Rs. 1,000.00 along with voucher copy 23rd March, 1983.
- Ex. M12 List of documents produced as evidence by S. B. G. Sarma, Presenting Officer on behalf of the Management.
- Ex. M13 Voucher copy dated 27th July, 1978 for Rs. 4,000.00.
- Ex. M14 Cheque No. 0035690 dated 15th May, 1978 for Rs. 4,000.00.
- Ex. M15 Memorandum of list of documents furnished by defence representative before the enquiry officer Bank of Baroda, Zonal Office, Madras.
- Ex. M16 Enquiry Proceedings.
- Ex. M17 Arguments on behalf of the management in the departmental enquiry against V. Anjanaya Sharma, Head Cashier, Bank of Baroda, Barakatpura Branch, Hyderabad.
- Ex. M18 Letter dated 7th August, 1984 addressed to Defence representative by S. B. G. Sarma, Presenting Officer with regard to Departmental enquiry against V. Anjanaya Sharma and copy to A. R. Lakshmanan.
- Ex. M19 Letter dated 7th August, 1984 addressed to A. R. Lakshmanan by S. B. G. Sarma with regard to departmental enquiry against V. Anjanaya Sharma.
- Ex. M20 Arguments of the defence representative dated 20th August, 1984.
- Ex. M21 Letter dated 20th August, 1984 addressed to Lakshmanan by P. Vivekanand Rao with regard to Department enquiry against V. Anjanaya Sharma.
- Ex. M22 Photostat copy of the enquiry report dated 31st December, 1984.
- Ex. M23 Notice dated 29th April, 1985 issued by Disciplinary Regional Manager (AP) Bank of Baroda to V. Anjanaya Sharma.
- Ex. M24 Proceedings of the hearing on the proposed punishment to V. Anjanaya Sharma, dated 7th May, 1985.
- Ex. M25 Representation dated 7th May, 1985 made by V. Anjanaya Sharma to the Disciplinary Authority.
- Ex. M26 Final (dismissal order) order dated 17th July, 1985 passed by the Disciplinary Authority (Regional Manager).
- Ex. M27 Order of the Assistant General Manager, Appellate Authority dated 7th November, 1985.

Sd/-

Industrial Tribunal

नई दिल्ली, 5 दिसम्बर, 1988

का.प्र. 3645 - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक प्राक बर्दीदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, कांमपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 5th December, 1988

S.O. 3645.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial dispute between the employers in relation to the United Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR

Industrial dispute No. 77/87

In the matter of dispute between :

The Secretary, United Bank of India Employees Association 28/93 Birhana Road, Kanpur.

AND

The Regional Manager, United Bank of India Regional Office Central Division 4-B Habibullah Estate Hazratganj, Lucknow.

AWARD

1. In the instant case on 5-8-88, Shri V. N. Sekhari, who was representing the instant case on behalf of the workmen moved an application to the effect that he wants to withdraw his letter of authority which was allowed. Thereafter, a notice was sent to the Union's General Secretary at the address given in the reference order who raised the industrial dispute on 25-8-88, fixing 1-9-88 to file affidavit evidence on behalf of the workman.

2. On 1-9-88, management appeared but none appeared from the side of the workman to contest the case or to file affidavit evidence for which purpose the case was fixed. Despite that the case was adjourned to 25-10-88 for filing of the rejoinder/affidavit evidence in the case, but on 25-10-88 again none appeared to contest the case from the side of the workman.

3. Thus from the above it becomes clear that despite sufficient opportunity afforded to the workman none turned up from his side to contest the case. As such it seems that neither the workman nor his union is interested to prosecute the case any more.

4. Accordingly a no claim award is given in the case.

5. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-12011/51/86/D.II. (A)]

नई दिल्ली, 5 दिसम्बर, 1988

का.प्र. 3646--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक प्राक बर्दीदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, कांमपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 5th December, 1988

S.O. 3646.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Dhanbad as shown in the Annexure in the Industrial Tribunal dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 210 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Bank of Baroda and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. N. Pandey, Advocate

On behalf of the employers—Shri J. P. Singh, Advocate.

STATE Bihar

INDUSTRY : Banking

Dhanbad, the 15th November, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/183/85-D II (A), dated, the 6th June, 1986.

SCHEDULE

"Whether the action of the management of Bank of Baroda in dismissing Shri Bikram Singh, Ex-Armed Guard with effect from 8-3-82 is justified? If not, to what relief is the workman entitled to?"

The case of the management is that the concerned workman Shri Bikram Singh was an armed guard of the management of Bank of Baroda at Patna main Branch. He was on duty on 20-1-81 from 9.30 A.M. to 5 P.M. with half an hour lunch break from 1.30 P.M. At about 11.30 A.M. the concerned workman went to the Accountant of the Bank and started talking and arguing with him in high tone in connection with assignment of the duty of the subordinate staff of the branch. The Senior Manager of the Bank called the concerned workman in his chamber and explained him the position regarding the re-allocation of duties assigned to the subordinate staff members of the Bank. The Senior Manager also advised the concerned workman to avoid disturbance in the banking hall so that there may be a smooth functioning of the Bank's business. It was pointed out to the concerned workman that his discussion with the Accountant in high speech tone amounted to unruly manner in the hall in the presence of the customers of the Bank. The Senior Manager tried to pacify the concerned workman but the concerned workman became furious and started talking in an abusive and indecent manner in presence of one of the Bank's constituent and Bank's Officer. The concerned workman tried to man handle and assault the Sr. Manager but he was prevented by the Staff members who rushed to the chamber of the Senior Manager and removed the concerned workman from the chamber. The management took a serious view of the indecent, unruly and improper behaviour of the concerned workman and issued a formal chargesheet against the concerned workman dated 10-2-81. The concerned workman was charged as follows :—

- (i) You behaved and conducted yourself in indecent, unruly and improper manner in the Bank's premises.
- (ii) You did acts which lowered the image of the bank in the eyes of the customers of Bank.
- (iii) You did act prejudicial to the interests of the Bank.
- (iv) You did acts subversive of good conduct and discipline.
- (v) You did act, unbecoming of an employe of the Bank.

The said charges amounted to gross-misconduct in terms of the provision of the Bipartite Settlement. It was specified in the chargesheet that the management had decided to start disciplinary proceeding against the concerned workman in respect of the charges. Shri Dilip Kumar Mukherjee, Senior Manager Brabourne Road branch Calcutta was appointed as Enquiry Officer to conduct the departmental enquiry against the concerned workman vide order dated 12-3-81 by the disciplinary authority. The concerned workman was intimated that he would be given all facilities to defend himself at the enquiry and he may also be represented at the enquiry by a representative of registered trade union of the Bank employee. The concerned workman vide letter dated 22-10-81 was suspended pending disciplinary proceeding against him.

The enquiry started on 14-12-81 in the premises of the Bank of Baroda Regional Office, Patna. The concerned workman attended the enquiry. The enquiry officer read out the charges in the chargesheet which was translated and explained in Hindi to the concerned workman by Shri M. K. Nair. The enquiry officer asked the concerned workman if he understood the contents of the chargesheet to which the concerned workman replied that he understood the same. The Enquiry Officer further asked him whether the concerned workman pleaded guilty of the charges to which the concerned workman replied that he admitted all the charges. Again the Enquiry Officer asked the concerned workman whether he had understood the charges dated 10-2-81 to which the concerned workman replied that he admitted all the charges with his free consent and not under any coercion, undue influence or mis-representation. The minutes of the proceeding were again explained to the concerned workman by the interpreter Shri M. K. Nair and the concerned workman accepted the minute to be correct and admitted all the charges. The Enquiry Proceeding was signed by the Enquiry Officer, the Presenting Officer on behalf of the Bank and the concerned workman. The Enquiry Officer submitted his enquiry report dated 15-12-81 holding that in view of the voluntary admission of all the charges contained in the chargesheet dated 10-2-81, all the charges were proved against the concerned workman. The management by their notice dated 11-2-82 served a notice of proposed punishment of dismissal in terms of clause 19(C)(a) of the bipartite settlement asking the concerned workman to show cause against proposed punishment. The concerned workman admitted his guilt before the disciplinary authority Shri V. V. Ramani on 26-2-82 and the proceeding of that day was signed by Shri R. V. Ramani and the concerned workman. The concerned workman was dismissed from service by order dated 8-3-82 on the basis of the departmental proceeding. Against the order of dismissal passed by the disciplinary authority the concerned workman preferred an appeal on 29-4-82. The appellate authority after hearing the concerned workman on 15-7-82 at Zonal Office, Calcutta was convinced about the quantum of punishment and by an order in writing dated 13-8-82 dismissed the appeal. The concerned workman was represented at the time of hearing of the appeal by Shri Basudeb Chakravorty, General Secretary of Bank of Baroda, Eastern Zone Employees Association. Thereafter the concerned workman raised an industrial dispute on 12-12-84 and on failure of conciliation the present reference was made to this Tribunal for adjudication. It is submitted on behalf of the management that as the concerned workman had admitted the charges in course of the enquiry proceeding that he had committed the misconduct as alleged against him in the chargesheet and voluntarily admitted all the charges the dismissal of the concerned workman is justified. All opportunities were given to the concerned workman to defend himself but he did not challenge the allegation of misconduct levelled against him. It is therefore proved that it may be held that the action of the management in dismissing the concerned workman was justified and that the concerned workman is not entitled to any relief.

The case of the concerned workman is that his service condition was governed by Dera Award read with various settlements which were entered into from time to time. The management had not asked any explanation from the concerned workman in respect of the charges levelled against him. The concerned workman does not know English and he can anyhow write his signature. The charges levelled against him was in English. He was not given opportunity to give reply to the chargesheet and he was directed to appear before

the Enquiry Officer. The enquiry was held on 14-12-81 by Shri Dilip Mukherjee who was appointed as Enquiry Officer. The management failed to follow the procedure as laid down in the Desai Award read with various settlements which are binding on the parties. The principles of natural justice were violated. The management have preconceived the guilt of the concerned workman without seeking any explanation from him. He was not allowed to be represented through his representative to defend his case.

At the relevant time the concerned workman was passing through great mental agony. His only son aged about 5 years met with serious accident on 11-12-81 and was admitted in a nursing home. The concerned workman was to meet the expenses of the treatment of his son to save his life and for that he required huge amount to be deposited to the nursing home. He had stated all those facts to the enquiry officer and the enquiry officer advised him to admit the charges and thereafter the bank would take a lenient view of the matter and will also meet the expenses of the treatment of his son. The concerned workman believing the words of the enquiry officer and as directed by the enquiry officer signed on 2 sheets of paper which was typed in English. The enquiry officer again assured him that the services of the concerned workman would be saved and that the management would take a lenient view of the matter in respect of the charges levelled against him. The paper which was signed by the concerned workman was neither read over nor explained to him.

The concerned workman had never used indecent language nor used any un-parliamentary language to the authorities. The concerned workman had never attempted to manhandle the Senior Manager or any authority of the Bank.

The punishment of dismissal from service of the concerned workman is too harsh and disproportionate to the allegations. On the above plea it is prayed by the concerned workman that the award be made in his favour and the order of his dismissal be set aside and the management be directed to reinstate him with full back wages.

At the very outset as the concerned workman had been dismissed from service on the basis of a domestic enquiry into the charges levelled against him, it was prayed on behalf of the management that it may first be decided as a preliminary issue whether the domestic enquiry held into the charges against the concerned workman was fair proper and in accordance with the principles of natural justice. The concerned workman was also challenging the fairness or propriety of the domestic enquiry in his W.S. and as such after hearing the parties on the said point I decided to hear first as a preliminary issue whether the domestic enquiry held into the charges against the concerned workman was fair, proper and in accordance with the principles of natural justice. By the order dated 9-8-88 it was held by the Tribunal that the enquiry against the concerned workman into the charges was fair, proper and in accordance with the principles of natural justice and thereafter the case was fixed for hearing on merit on the materials which were already on the record of the enquiry proceeding.

Now the point for decision is whether the dismissal of the concerned workman was justified. It has therefore to be seen whether there were materials on the record of the enquiry proceeding which justified the dismissal of the concerned workman.

The management has filed all the relevant documents in connection with the departmental enquiry and they are marked Ext. M-1 to M-12.

It is the admitted case of the parties that the concerned workman was chargesheeted vide Ext. M-2 in respect of the misconduct enumerated in it. It is also admitted that the enquiry took place on 14-12-81 in presence of the concerned workman. Ext. M-6 dated 14-12-81 is the enquiry proceeding which shows that the concerned workman was present in the enquiry. It is admitted by the concerned workman his W.S. that he had signed on 2 typed sheets of the enquiry proceeding. It will appear from the enquiry proceeding Ext. M-6 that the concerned workman did not bring any representative to defend his case and that at the request of the concerned work-

man the enquiry officer permitted Shri M. K. Nair as interpreter to explain and translate the contents of the proceeding in Hindi. It is further stated in Ext. M-6 that the enquiry officer read out the chargesheet dated 10-2-81 which was translated and explained in Hindi by Shri Nair, to the concerned workman and thereafter the enquiry officer asked the concerned workman whether he understood the contents of the chargesheet to which the concerned workman replied that he understood the same. Thereafter the enquiry officer asked the concerned workman whether he pleaded guilty of the charges to which the concerned workman admitted all the charges. He was again asked whether he understood the charges to which he replied that he was admitting all the charges. Ext. M-6 further shows that the concerned workman stated to the enquiry officer that he was admitting all the charges with his free consent and not under any coercion, undue influence or any misrepresentation. The minutes of the proceeding were again explained to the concerned workman in Hindi by Shri M. K. Nair and the concerned workman admitted all the charges. The said proceeding in two pages is signed by the enquiry officer, Management's presenting officer and the concerned workman. It will thus appear from the enquiry proceeding that the contents of the chargesheet were explained over to the concerned workman in Hindi and that after understanding the same he had admitted the charges levelled against him. As the concerned workman had accepted the charges there was no need to the management to adduce any oral evidence on the charges levelled against the concerned workman and the Enquiry Officer was within his right to submit his inquiry report holding the concerned workman guilty of the charges levelled against him in view of the pleading of guilty expressed by the concerned workman.

Ext. M-7 is the enquiry report dated 15-12-81 which shows that in view of the voluntary admission of all the charges as contained in the chargesheet dated 10-2-1981 the charges stood proved against him. Thereafter the management vide Ext. M-8 dated 11-2-82 issued notice under the signature of Shri V. V. Ramani, Regional Manager who was the disciplinary authority to the concerned workman asking him to show cause as to why the punishment of dismissal is not imposed upon him. In terms of clause 19(6)(a) of the bipartite settlement, Ext. M-9 dated 26-8-82 is the proceeding of the disciplinary authority bearing the signature of the disciplinary authority and the concerned workman. It appears from this proceeding that the concerned workman was heard on the point of proposed punishment of dismissal against him. It shows that the concerned workman did not bring any representative to defend his case before the disciplinary authority and therefore on the request of the concerned workman, the disciplinary authority allowed Shri Md. Nizamuddin a clerk attached with the Bihar Regional Officer as interpreter. The proceeding further shows that the concerned workman had understood the contents of the notice of proposed dismissal dated 11-2-82 (Ext. M-8) and thereafter the disciplinary authority asked the concerned workman whether he has to say anything about the proposed punishment of dismissal. In reply the concerned workman told him that he had admitted the charges committed by him and that Shri Dipankar Mukherjee, Personnel Officer and Shri S. S. Prasad, General Secretary, Bihar State Bank of Baroda Employees Union affiliated to the federation were responsible for the offence committed by him. The concerned workman stated before the disciplinary authority whether dismissal was the award for his truthful admission and that if it was so he will abide by the order of the disciplinary authority. The concerned workman also requested to condone his lapses as he is having a family of 4 children. It will appear from the said proceeding Ext. M-9 that even before the disciplinary authority the concerned workman had accepted his guilt and was only expecting lenient punishment for his truthful admission of the charges. Ext. M-10 dated 8-3-82 is the order of the disciplinary authority by which the punishment of dismissal was passed against the concerned workman.

After the order of dismissal of the concerned workman, he filed an appeal against the order of the disciplinary authority before the A.G.M. who was the appellate authority in respect of disciplinary matters of the Bank. Ext. M-12 is the order of the appellate authority confirming the order dated 8-3-82 passed by the disciplinary authority upon the concerned workman and dismissing his appeal.

From the discussion made above it appears that the order of dismissal from service was passed against the concerned workman as he had admitted the guilt. Now the question is whether the punishment of dismissal passed for the charges levelled against him were proportionate to the charges established against him. From the charges levelled against the concerned workman in Ext. M-2 it will appear that he had behaved in an indecent unruly manner in the Banks premises with the accountant and the Senior Manager of the Bank in presence of the customers. There is no allegation that the concerned workman had assaulted any employees or officer of the Bank. There is also no specific words of abusive language which were used by the concerned workman at the alleged time. It appears from Ext. M-2 that he had gone to the Accountant of the Branch and started talking and arguing with him high tone in connection with the assignment of duties of the subordinate staff members of the branch and that the concerned workman was talking in a very unruly and improper manner by shouting at the top of his voice in the Banking hall. The further allegation is that the concerned workman became furious and started talking in an abusive and indecent manner with the Senior Manager and that he tried to manhandle and assault the Senior Manager but it was averted. Thus in nutshell the charge is that the concerned workman was speaking in high tone in the Bank with the Accountant and the Sr. Manager and that the talk was in an abusive and indecent manner. The concerned workman had not assaulted any person. Thus the facts established by admission of the concerned workman mostly related to his unruly behaviour and abusive language. In my opinion the punishment of dismissal from service for the established charges does not justify dismissal of the concerned workman and in order to tame the concerned workman the management could have passed a lesser punishment than that of dismissal of his services so that the pangs of hunger may not have struck his family members and the discipline of the Bank also should have been maintained by the concerned workman. A case reported in 1982 (II) AI Service Law Journal page 532 (Ramakant Mishra-Vrs. The State of U.P. and others) has been referred to on behalf of the concerned workman. It will appear from the facts of the said case that the appellate Ramakant Mishra of the said case was served with chargesheet alleging that he was guilty of disorderly behaviour punishable under the relevant standing orders and a departmental enquiry was held against him after suspending him from services. The enquiry officer after holding the enquiry recorded his finding that the charge was established. The charge was as follows :—

"Shri Ramakant was charged for misconduct under clause 20(9), 18 and 28 of the Standing Orders for disorderly behaviour or conduct likely to cause a breach of peace threatening an employees within the premises and conduct prejudiced to good order and discipline."

The specific allegation against him was that he was complaining about the deduction that was being made from his wages for his absence from the place of work and late attendance with Shri Mahendar Singh. When Shri Mahendar Singh replied that there was no separate rules the appellant is alleged to have lost his balance. The threatening language alleged against him will indicate that he had used abusive language against Shri Mahendar Singh. It was held by their Lordship of the Supreme Court that under Section 11A of the ID Act the Labour Court/Tribunal has its jurisdiction and power to substitute its measure of punishment in place of managerial wisdom once it is satisfied that the order of dismissal was not justified in the facts and circumstances of the case. Their Lordship stated that before they can exercise the discretion conferred by Section 11A, the Court has to be satisfied that the order of dismissal was not justified in the facts and circumstances of the case. These words indicate that even though the misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. It is as well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged. Their Lordships further held that the punishment of dismissal due to misconduct for use of indiscreet/abusive/threatening language on one occasion

alone unconnected with any subsequent positive action and not preceded by any blame worthy conduct cannot permit and extreme penalty of dismissal from service and therefore the dismissal of the appellant Ramakant Mishra was sent aside by their Lordship.

Having the above observations of their Lordships in 1982 All India Service Law Journal page 532 the punishment of dismissal passed against the concerned workman in the present case is not justified even if the concerned workman had used indiscreet/abusive or threatening language. There is absolutely no evidence on the record to show that any previous act of misconduct or indecent behaviour of the concerned workman and as such I am of the opinion that it is a fit case in which the punishment of dismissal of the concerned workman has to be set aside. However, as the charges against the concerned workman were established as he has himself admitted the charges before the Enquiry Officer, I would suggest a punishment which is lenient to the punishment of dismissal of the concerned workman.

I hold therefore that the action of the management of Bank of Baroda in dismissing the concerned workman Shri Bikram Singh, Armed Guard with effect from 8-3-82 is not justified but as the charges against the concerned workman has been established a lenient punishment has to be passed. The punishment of dismissal was not proportionate and commensurate with the gravity of misconduct established against the concerned workman. The ends of justice will be fulfilled if the concerned workman is not paid wages from the date of his dismissal to the date of his reinstatement by way of punishment to the established charge. The management is directed to reinstate the concerned workman within one month from the date of publication of the Award but he will not be entitled to any wages for the period of his idleness. However, he will be entitled to the continuity of service.

Award is passed accordingly.

Sd/-

I. N. SINHA, Presiding Officer

[No. L-12012|183|85-D.II(A)]

का.आ. 3647:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड कमर्शियल बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1, बम्बई के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 3647.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1 Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the United Commercial Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No. OGIT-33 of 1987

PARTIES :

Employers in relation to the management of United Commercial Bank, Bombay

AND

Their workman.

APPEARANCES :

For the Management—Mr. A. V. Vaidya, Officer, Personnel Department and Mr. A. R. Kini, Advocate.

For the Workman—Mr. J. G. Gadkari, Advocate.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, dated the 5th day of April, 1988

AWARD

The Central Government in exercise of powers conferred by clause (d) of sub-section 1 and sub-section 2-A of section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the employer, United Commercial Bank, Bombay in dismissing Shri V. T. Mhaskar, Watchman-cum-Peon, Dadar Branch of United Commercial Bank, from service is justified? If not, to what relief the workman concerned is entitled?"

2. As mentioned in the showcause notice dated 20-9-1983 the workman Shri V. T. Mhaskar was charged for the following acts of misconduct.

"1. Surreptitiously removed two cheque books from Dadar Branch, bearing nos. AS-40-112571 to 112580 and AS-40-112581 to 112590.

2. Unauthorisedly removed a cheque no. A1/40-112571 dated 26-12-1982 for Rs. 8,000 presented through inward clearing by Saraswati Co-op. Bank Ltd. and received by Dadar Branch from Bombay main office, and inserted in its place another cheque bearing no. AS-40-113089 dated 29-12-1982 for Rs. 8,000.

3. You had stolen the above cheque leaf no. 113089 from the cheque book to be issued to Mr. Y. N. Sharma maintaining a Saving Bank Account with our bankers external counter."

3. In his reply dated 23-9-1983 the workman stated as follows:—

"I am a very poor man having large family consisting of wife, children and ailing old mother. Owing to continuous sickness and increasing expenditure on medicines I could not meet the basic requirements of my family like food and clothes. These unfortunate circumstances had upset me considerably and was not in my proper sense to understand of what I was doing. The facts mentioned in your above cited letter are nothing but a result of my psychological feelings during last year for which I now feel ashamed, and realise my fault. I really repent for what I have done.

I have already confessed before you, the act, which you have mentioned in your aforesaid letter.

You are aware of my past records. I am proud to say that I have always rendered my sincere and honest services to the institution, and assure you of my efficient and loyal services to the bank in future also.

As already mentioned earlier, I have to manage my large family with one earning. I neither have any brothers nor my father is alive. I have agreed to the fault because of my psychological effect, and in view of the fact that Bank did not suffer any loss, I earnestly request you to condone my acts and waive further proceedings in the matter."

4. During the enquiry the workman categorically admitted to have committed all the three acts of misconduct mentioned in the showcause notice-cum-chargesheet dated 20-9-1983 and referred to the above quoted letter dated 23-9-1983 in which he had confessed to all the charges. He also handed over to the enquiry officer a letter dated 18-2-1984 (the date on which the enquiry was held) stating as follows:—

"I, the undersigned, Employee under disciplinary action V. R. Mhaskar respectfully submit the following for your kind and sympathetic consideration.

(1) that in reply to your Memo and suspension order dated 20-9-83 and 24-9-83, I have submitted my reply dated 23-9-83 wherein I have accepted the same and the circumstances in respect thereof were also explained in the said letter.

(2) that in view of the above, it will be appreciated that there is no need to hold enquiry into the allegation except to consider the matter consequent to my frank admissions of the same.

(3) that, therefore, in view of the circumstances submitted by me on 23-9-83 for which I express my unqualified regrets and having regard to the fact in my letter I respectfully request your good selves to sympathetically consider the position and be kind enough to allow me to work in our esteemed institution for which I shall remain grateful to you.

I further assure you that I shall diligently carry out my duties without any complaint whatsoever.

5. In view of the above quoted letter addressed to the enquiry officer the enquiry was concluded on the same day. Thereafter the enquiry officer submitted his report on 3rd March, 1984 to the Disciplinary Authority making the following recommendation:—

"Even though Bank has not suffered monetary loss the modus operandi to perpetrate the fraud on the Bank was serious. If this fraud had not been detected in the initial stage Bank perhaps would have been put to heavy losses. Such types of acts which are prima facie malicious and prejudicial to the interest of the bank should be firmly dealt with so that they may not be repeated elsewhere."

6. On receipt of the report of the enquiry officer, the disciplinary authority issued a showcause notice dated 9-4-1984 in respect of the proposed punishment. The disciplinary authority heard the workman and his representative. On 16-6-1984 and passed order dismissing the workman from service, on 12th October, 1984. Being aggrieved by this order the workman preferred an appeal to the Asstt. General Manager, the appellate authority raising several technical objections to the enquiry and praying without prejudice to those objections that lenient view of the matter be taken and punishment short of discharge or dismissal only be inflicted. The appellate authority heard the appeal on 7-1-1985 and rejected it vide the order dated 16th April, 1985.

7. In his statement of claim the workman did not raise the technical objections to the enquiry, which he had raised before the Enquiry Officer and the Disciplinary Authority. He did not challenge the legality and validity of the enquiry proceedings obviously because in the writing submitted by him to the Enquiry Officer he reiterated his confessional statement made in the letter dated 23-9-1983, stated that in view of his admission no enquiry be held and prayed that a lenient view of the matter be taken. He however challenged the dismissal order on the grounds that (1) the Disciplinary Authority did not take his past clear record into consideration before deciding upon the punishment, (2) that it is discriminatory and is thus violative of Art. 14 of the constitution in as much as the Bank had taken lenient view in cases in which other employees were found guilty of equally serious misconducts, and (3) that the order will be deemed to have been set aside as the appellate authority did not hear and decide the appeal within the time limit prescribed by the Bipartite Settlement. He also contended that taking into consideration all relevant circumstances the extreme punishment of dismissal is unduly and disproportionately harsh.

8. In support of the contention that no taking into consideration the previous good record of the workman, as required by clause (c) of paragraph 19.12 of the Bipartite Settlement dated 19-10-1966, vitiates the dismissal order reliance is sought to be placed by the workman on the decision of the Bombay High Court in the case between Borosil Glass Works Ltd. and M. G. Chitale and Richard M. D'Souza (1974 II LLJ Page 184). In that case the Industrial Tribunal had rejected the application for approval filed by the management under Section 33(2)(b) of the Industrial Disputes Act on the ground that the management did not comply with the provisions of standing order 25(6) of the Modal Standing Orders which laid down that in awarding punishment under Standing Order 25 the management should take into consideration the gravity of the mis-

conduct, the previous record if any, of the workman and any other extenuating or aggravating circumstances that might exist. While upholding the order the Industrial Tribunal the learned judges of the Division Bench observed as follows in para 11 of their judgment.

"The Industrial Tribunal, therefore, has to give careful consideration on the findings on which the order of discharge or dismissal or any other punishment is meted out, and there should be sufficient material to show that the punishing authority has applied his mind to the various allegations and what kind of punishment can ultimately be meted out to him. He has to show under the Standing Order 25(b) whether he has considered the previous record, if any, what is the gravity of the misconduct on which he relies, and what are the extenuating or aggravating circumstances that he has to take into consideration before passing the final order. The Standing Order 25(6) has not to be observed merely as a routine or a matter of form but careful application of mind is required to each of the relevant factors mentioned therein before coming to the conclusion, and such an application of mind must be revealed in the order itself, and much more so when it is the question of dismissal of an employee."

9. Clause (c) of paragraph 19.12 of the Bipartite Settlement of 1966 contains a provision analogous to the provision contained in clause (6) of Model Standing Order No. 25. But the contention that the past clear record of the workman was not taken into consideration by the Disciplinary Authority is not factually correct. In his final order the Disciplinary Authority has observed as follows :—

"The defence representative has without prejudice to his view set out above, further pleaded that the case should be considered on grounds of mercy. These grounds are contained in your letter dated 23-9-1983 addressed to the branch. You have stated therein that you were driven to commit the acts of misconduct to meet the heavy medical expenses of your family, that the bank has not been put to any monetary loss, and that your record of service prior to this has been good.

Unfortunately, on going through the papers what strikes one is the fact that you have committed the acts of misconduct with an intent to defraud the bank in a pre-meditated and planned manner. There is, therefore, no mitigating factor which would warrant leniency."

It is clear from these observations that the Disciplinary Authority did take into consideration the fact that the past record of the workman was good but did not attach any significance to that factor in view of the nature of the misconduct.

10. There is no substance in the contention that the dismissal order is discriminatory and thus violative of Art. 14 of the constitution, because while others who were held guilty of equally serious misconducts were dealt with leniently, extreme punishment of dismissal is inflicted on the workman in this case. The workman has filed a chart alongwith his statement of claim, showing punishment given in seven other similar cases. The management has not disputed the correctness of the entries in the chart. But the fact that others were shown leniency while the workman was dealt with severely does not amount to discrimination because leniency is shown or denied depending on the particular circumstances of each case. Circumstances extenuating or otherwise in each case are different and one case cannot be a binding precedent in the other.

11. As mentioned above the workman had preferred an appeal to the Asstt. General Manager. The appeal was undated. The exact date on which it was filed could not be ascertained, but admittedly it was not decided within two months. It is not disputed that the appeal was filed within 45 days from the dismissal order, which was passed on 12th October, 1984. It was heard on 7-1-1985 and was decided on 16th April, 1985. It is therefore contended that

as the appeal was not decided within two months, as required by paragraph 19.14 of the Bipartite Settlement, it should be deemed to have been allowed and the dismissal order deemed to have been set aside.

12. The relevant portion of paragraph 19.14 reads as follows:—

"Such appellate authority shall, if the employee concerned is so desirous in a case of dismissal, hear him or his representative before disposing of the appeal. In cases where hearings are not required, an appeal shall be disposed of within two months from the date of receipt thereof. In cases where hearings are required to be given and are requested for, such hearings shall commence within one month from the date of receipt of the appeal and shall be disposed of within one month from the date of conclusion of such hearings. The period within which an appeal can be preferred shall be 45 days from the date on which the original order has been communicated in writing to the employee concerned."

The prescribed time schedule however is not rigid and non-observance by the management of the schedule cannot have the consequence of the appeal being allowed automatically on expiry of the time-limit.

13. There is however great force in the submission that lenient view of the matter should have been taken and punishment short of removal from service would have met the ends of justice and for various reasons this submission deserves to be accepted. Firstly, the workman was driven to commit the acts complained of, by acute financial difficulties, caused, not due to any vices or by his adopting a life style which he could not afford, but because of continuous illness of members of his family. The workman frankly admitted the charges, and gave this reason for his lapse, at the earliest opportunity. Secondly, no financial loss was occasioned to the Bank on account of the acts attributed to the workman. Thirdly, the past record of the workman was good and unblemished, a fact never in dispute. Fourthly, the Bank has taken lenient view in similar cases, and there was no special reason for not showing similar mercy to the workman in this case. No doubt the misconduct was of serious nature but there are several good reasons and extenuating circumstances to justify a lenient view of the matter. I am satisfied that the order of dismissal was not justified nor will be an order of discharge or removal from service.

14. The order of dismissal passed against the workman is set aside, and the workman is directed to be reinstated in service forthwith, with full backwages from the date of reference, the period from the date of dismissal till the date of reference to be treated as extra ordinary leave without pay. The punishment of dismissal is substituted by stoppage of one increment permanently.

M. S. JAMDAR, Presiding Officer

[No. 1-12052/57/87-D.II(A)]

नई दिल्ली, 7 दिसम्बर, 1988

का.शा 3648—औद्योगिक विवाद अधिनियम, 1947/1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान कॉमर्शियल बैंक (पीएनबी) के प्रबन्धकों के संबंध निम्नलिखित और उनके कार्यवाहों के बीच, श्रृंखला में निहित औद्योगिक विवादों में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के प्रावधानों को प्रकाशित करती है जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 7th December, 1988

S.O. 3648.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Hindustan Commercial Bank (PNB) and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT KANPUR

Industrial Dispute No. 185/87

In the matter of dispute between
Asstt. General Secretary,
UP Bank Employees Union,
36/1, Kailash Mandir,
Kanpur.

...Petitioner.

AND

Asstt. General Manager,
Hindustan Commercial Bank Ltd.
(Punjab National Bank),
Head Office,
Birhana Road, Kanpur.

...Opp. party/s.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/99/86-D. IV (A) dt. 18-12-87, has referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Hindustan Commercial Bank Limited (now merged with Punjab National Bank) in terminating the services of Shri Shyam Sunder Tiwari, Peon, Madhoganj Branch, Hardol, with effect from 28-6-85 was justified? If not, to what relief is the workman entitled?"

2. The present case was fixed on 27-10-88 filing the statement of claim from the side of the workman. But on 27-10-88, instead of filing the same parties filed settlement with the request that the reference be decided in terms of the settlement. The settlement is signed by the Regional Manager on behalf of the management and on behalf of the workman by Shri P. N. Tiwari, General Secretary of the Union. It is dated 30-9-88. Shri V. N. Sekhari, the Authorised Representative for the workman has verified the signatures of Shri P. N. Tiwari on the settlement. The terms of settlement are as :—

(1) That the Bank without prejudice to its various contentions agrees to appoint Shri Shyam Sunder Tewari as a confirmed employee in the subordinate cadre of the bank with basis pay of Rs. 430 in the pay scale of Rs. 430-10-450-14-490-16-540-20-680-25-730-30-790.

(2) That the workman will not be entitled to any benefit monetary or otherwise, in any shape or form in respect of his past temporary services/casual job for the period intervening between the date of cessation of his service and the present re-appointment, and consequently date of joining.

3. That Shri Shyam Sunder Tewari will be appointed in the services of the bank under Lucknow Region, Lucknow within 15 days of the filing of the settlement before the Hon'ble CGIT-cum-Labour Court, Kanpur. Shri Shyam Sunder Tewari's appointment will be subject to submission of educational certificate, date of birth certificate and medical fitness certificate.

4. Shri Shyam Sunder Tewari will be deemed to be in the services of the bank w.e.f. the date of his joining in terms of appointment letter.

5. That the above is in full and final settlement of all the claims of the workman/union and they shall not raise any dispute or demand before any authority with regard to temporary or otherwise services already rendered by Shri Shyam Sunder Tiwari with the Bank. (erstwhile HCB Ltd.)

6. That this settlement has been arrived at having regard to the peculiar facts and circumstances of the case and this settlement shall not be cited as a precedent by any parties before any forum.

3. Thus in view of the above no dispute remains left.

4. The reference is answered accordingly.

ARJAN DEV, Presiding Officer
[F. No. L-12012/99/86-D.IV(A)]

का. मा. 3849.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार इंडियन बैंक के प्रबन्धन के संबंध में निजीकरण और उनके कर्मचारियों के बीच, अनुसूचन में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के संघर्ष को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 3649.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Shri S. K. Misra, LL.B.,
Presiding Officer, Industrial
Tribunal, Orissa, Bhubaneswar.
Industrial Dispute Case No. 2 of 1987 (Central)
Dated Bhubaneswar, the 28th September, 1988

BETWEEN

The Management of Indian Bank,
Chaudwar Branch, At/P.O. Chaudwar,
Dist. Cuttack.

...First Party-Management

Vrs.

Their workman Smt. Sabbitri Devi,
W/o Appanna, C/o United Commercial
Bank, Chaudwar, P.O. Kapileswar, Dist. Cuttack,
...Second Party-Workman.

APPEARANCE :

Sri S. B. Nanda, Advocate—For the First Party-Management.

Sri R. K. Bose, Advocate.

Sri L. M. Nanda, Advocate—For the Second Party-Workman.

AWARD

1. The Government of India in the Ministry of Labour Department in exercise of the powers conferred upon them under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their Order No. L-12012/45/86-D.II(A) dated 13th January, 1987 for adjudication:—

"Whether the action of the Management of Indian Bank, Chaudwar Branch in terminating the services of Smt. Sabbitri Devi, Sweepers of Indian Bank, Chaudwar with effect from July, 1981 is legal and justified? If not, to what relief is the workman concerned entitled?"

7. The case was posted to 28-9-1988 for recording settlement on the request of the parties. Today the representatives of the First Party—Management and the Second Party—workman filed a compromise petition and submitted that they have settled the dispute out of court in the interest of industrial peace and harmony and prayed to pass an Award in term of the compromise petition. The compromise appears to be fair. Hence I pass this Award in terms of the compromise petition. The compromise petition do form part of the Award.

S. K. MISRA, Presiding Officer
[No. L-12012/45/86-D.II(A)]
N. K. VERMA, Desk Officer

BEFORE THE PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, ORISSA, BHUBANESWAR

I.D. Case No. 2/87(C)

BETWEEN

Management of Indian Bank, Choudwar Branch,
Choudwar. ..First Party.

AND

Smt. Sabitri Devi ..Second Party.

In the matter of :

A petition of compromise of the dispute.

The humble joint petition of the parties as aforesaid
Most Respectfully Sheweth :—

1. That the parties in their mutual interest and anxiety had have amicable negotiations to compose the dispute and after several rounds of discussions with the aid and assistance of their counsels have with free volition and knowledge agreed to settle the dispute fully and finally on the following terms and conditions :

- (i) The first party shall pay to the second party workman in presence of her counsel a sum of Rs. 8,000 (rupees eight thousand only) as composition money in full and final settlement of the dispute under adjudication in the above case.
- (ii) The above amount shall be paid to the workman on or before 15-10-88 in the following manner:
 - (a) Rs. 7,000 will be paid through bank deposit by opening a bank account in the name of the workman at the Indian Bank, Chaudwar Branch and the workman shall complete the necessary formalities for opening such Bank account in her favour.
 - (b) The balance Rs. 1,000 will be paid to her in cash.
 - (c) The workman shall pass on due receipt for the above sums to the first party.
- (iii) The workman accepts the above and agrees that she has no other or further dispute with the first party in the matter of her employment, non-employment or conditions of service hereafter.

2. That both parties declare that in view of the above compromise of the dispute, the parties have no further cause to continue with the proceedings pending before the Hon'ble Tribunal.

PRAYER

The parties, therefore, jointly pray that this compromise be accepted and that an award in terms thereof may kindly be passed.

By the first party
through

Sd/-
Advocate.

Thumb impression
(Second party workman)

Dated, Bhubaneswar, the 28th September, 1988

नई दिल्ली, 29 नवम्बर, 1988

का.पा. 3650—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य निगम, हिराकुड जिला सम्मलपुर (उड़ीसा) के प्रबन्धकों के सम्बन्ध में उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण सूचनेपर के संघर्ष को प्रकाशित करने हेतु, जो केन्द्रीय सरकार को 16.11.88 को प्राप्त हुआ था।

New Delhi, the 29th November, 1988

S.O. 3650.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby

publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India, Hiraikud District Sambalpur and their workmen, which was received by the Central Government on the 16-11-88.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Shri S. K. Misra, LL.B. Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

Industrial Dispute Case No. 58 of 1987 (Central)

Dated, Bhubaneswar, the 2nd November, 1988

BETWEEN

The Management of Food Corporation of Hiraikud, Distt. Sambalpur.

....First Party—Management.

AND

Their workman Sri B. Jagannath Rao, Ex-watchman, F.C.I., Hiraikud, C/o. Shah Industries, Ashok Talkies Road, Sambalpur.

.....Second Party—Workman.

APPEARANCES :

Sri R. Balakrishnan, Deputy Manager (P).....
For the First Party—Management.

Sri B. Jagannath Rao.....The workman himself.

AWARD

1. The Government of India in the Ministry of Labour in exercise of powers conferred upon them by Section 10(1)(d) and Section 10(2-A) of the Industrial Disputes Act, 1947 (14 of 1947) by their Order No. L-42012/151/86-D.II(B) dated 24th August, 1987 have referred the following dispute between the Management of the Food Corporation of India, Hiraikud, Distt. Sambalpur and their workman for adjudication :—

"Whether the action of the management of Food Corporation of India, Hiraikud, Distt. Sambalpur in terminating Sri B. Jagannath Rao, Watchman from service with effect from 13-12-1985 is legal and justified? If not, to what relief is the concerned workman entitled?"

2. The Food Corporation of India has a Food Storage Depot at Hiraikud. It had a rice mill close to the said depot, known as Modern Rice Mill, Hiraikud. The second party-workman Sri B. Jagannath Rao was engaged as a daily rated watchman in the Modern Rice Mill since December, 1980 and he continued as such until 13-12-1985 when his services were dispensed with on the ground of alleged closure of the said Modern Rice Mill by the Food Corporation of India.

3. The case of the workman is that though he continuously worked as a watchman on daily rate wage basis from 22-12-80 till 13-12-85, his services were illegally retrenched without compliance of the provisions of Section 25-F of the Industrial Disputes Act and also in violation of Section 25-H of the said Act.

4. The case of the First Party—Management as would appear from the written statement filed on its behalf is that the second party—workman was engaged purely on casual and "no work no pay" basis without being issued with an appointment order and as such he was not entitled to any notice or any compensation prior to his disengagement. In the said written statement the further plea taken by the First Party—Management is that the Modern Rice Mill, Hiraikud was officially closed down on 26-8-1985 due to reasons beyond the control of the Management and on such closure, the second party-workman left his place of work at his own will and as such, there was no retrenchment of his service on 13-12-1985 as alleged. The Management also took the plea

that during the conciliation proceeding it offered retrenchment compensation and also full back wages for the period of his forced idleness if the workman agreed to sign a settlement but the workman did not agree and he demanded back his job which was not available to be given to him because of the closure of the Rice Mill.

5. On these pleadings, the following issues were framed :—

ISSUES

- (1) If there has been retrenchment from service of Sri B. Jagannath Rao, Watchman with effect from 13-12-85 as alleged?
- (2) If there was closure of the Modern Rice Mill with effect from 26-8-1985 as alleged by the Management?
- (3) If the workman Sri Rao is not covered by the provisions of Section 25-F of the Industrial Disputes Act, 1947?
- (4) To what relief, if any, the workman is entitled?

FINDINGS

6. Issue No. 1.—It is the case of the Management as stated in paragraph 3 of its written statement that the Modern Rice Mill, Hirakud was officially closed down on 26-8-1985 due to reasons beyond the control of the Management and thereafter the second party—workman voluntarily left the place of work and as such there has been no retrenchment of his services on 13-12-1985 as alleged.

In this connection, I may refer to the evidence of the second party—workman Sri B. Jagannath Rao who stated on oath that his employment was terminated with effect from 13-12-1985 on the ground that the mill was closed. He denied the suggestion made to him during his cross-examination that on 13-12-1985 the mill was closed. From such suggestion, it appears that the Management gave up its case in the written statement that the mill was closed on 26-8-1985. It would appear from the detailed statement of the casual watchmen engaged in the Modern Rice Mill from 1979 to 1985 which had been annexed to the Management's written statement and has been marked as Ext. 1 in this proceeding that the second party—workman worked for 293 days during the year 1981, 322 days during the year 1982, 308 days during the year 1983, 275 days during the year 1984 and 277 days during the year 1985. The statement also shows that this workman worked in the rice mill during the months of September, October, November and four days in the month of December, 1985. In the circumstance, it can never be believed that the Modern Rice Mill was officially closed on 26-8-1985 and thereafter the second party—workman voluntarily left his job and there was no disengagement or refusal of employment to him on 13-12-1985.

7. The Management's case as would appear from paragraphs 4, 5 and 6 of its written statement is that as the establishment of the Modern Rice Mill, Hirakud was closed down due to reasons beyond the control of the Management, question of Sri Rao's further continuance in the Mill did not arise and as no work was available consequent to closure, the second party—workman left his place of duty at his own will. The Management's further case is that since the second party—workman had been engaged on "no work no pay" basis, the Management was not obliged to issue any retrenchment order to him. Having said thus, the Management also took the plea that it offered retrenchment compensation and full back wages to the second party—workman for the period of forced idleness he was subjected to, during the conciliation proceeding on condition that the workman would sign a settlement to that effect but he did not agree. All these are contrary pleas and all these suggest that in fact there was disengagement of the workman by the First Party—Management.

8. The meaning and import of the term "retrenchment" has been considered by the Hon'ble Supreme Court of India and also different High Courts. It will be sufficient to quote below the relevant portion of the decision of the Supreme Court in the case of the State Bank of India Vrs. N. Sundara

Money reported in (1976) 3 S.C.R. 163 which has been quoted with approval in the case of Avon Services (Production Agencies) Pvt. Limited Vrs. Industrial Tribunal, Haryana, Faridabad and others reported in 1979 (1) LLJ 1 :—

Break-down of Section 2(oo) unmistakably expands the semantics of retrenchment 'Termination for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means to end, conclude, cease."

In consideration of the evidence of the workman recorded in this proceeding, the documents exhibited in this proceeding and in the absence of any evidence from the side of the Management, I would hold that the second party—workman was retrenched from his services as a watchman by the First Party—Management with effect from 13-12-1985.

9. Issue No. 2.—This issue relates to the question of alleged closure of the Modern Rice Mill with effect from 26-8-1985 as alleged by the Management.

So far as this issue is concerned, no oral evidence has been adduced on behalf of the Management to prove its allegation that in fact, the Modern Rice Mill at Hirakud was closed down on 26-8-1985. On the contrary the statement they have filed showing engagement of casual workers in the Modern Rice Mill (Ext. 1), would go to show that three casual workmen continued in employment under the First Party—Management in the Modern Rice Mill till a part of December, 1985. The First Party—Management relied upon some documents such as Exts. 4, 5 and 6 to show that because the running of the Modern Rice Mill became uneconomic, the F.C.I. decided to discontinue it but there is no evidence to indicate as to actually on which date the Modern Rice Mill was completely closed down.

W.W. 1 stated that his services were dispensed with, with effect from 13-12-1985 on the ground that the mill was closed but he stated that after 13-12-85 the mill's office functioned, the Unit Manager attended the office and the mill's properties continued to remain there. He could not say if milling of paddy continued in the mill after 13-12-1985. In the absence of any evidence adduced on behalf of the Management on the question, it is not possible to hold that the mill was closed down completely on 26-8-1985 within the meaning of Section 25-FFF of the Industrial Disputes Act. On the other hand the evidence on record clearly suggest that on 26-8-1985 there was no closure of the mill and the casual employees continued in the said mill till December, 1985. Stoppage of milling in a mill for some period does not amount to complete closure of the mill. This issue is accordingly answered against the Management.

10. Issue No. 3.—This issue relates to the question as to whether the second party—workman is covered by the provisions of Section 25-F of the Industrial Disputes Act. This issue arose in view of the pleading of the Management that because the second party had been engaged as an employee of the Modern Rice Mill on "no work no pay" basis, it was not obligatory on the part of the Management to issue any retrenchment order terminating his services and also in view of the plea of the Management that the second party left the mill of his own after closure of the establishment.

I have already held above that the second party was retrenchment from service with effect from 13-12-1985. The Management's plea of closure of the establishment with effect from 26-8-1985 has already been rejected by me because the factum of closure has not been proved by the Management.

Besides even if that the milling in the Modern Rice Mill came to a stop and the F.C.I. Management decided to close down the said rice mill and dispose of the same are believed then also it can not be held that there was closure of an undertaking so as to attract the provisions of Section 25-FFF of the Industrial Disputes Act and not Section 25-F of the said Act.

The Modern Rice Mill of the Food Corporation of India, Hirakud, in my view, cannot be said to be an independent undertaking for the purpose of Section 25-FFF.

Food Corporation of India, Orissa zone is divided into several districts. Sambalpur zone of the Food Corporation of India is a district where at different places there are food storage depots and rice mills. The Modern Rice Mill as also food storage depot of the F.C.I. at Hirakud are under the administrative control of the District Manager, F.C.I., Sambalpur. The F.C.I. districts in the state of Orissa are under the administrative control of the Regional Manager, F.C.I., Bhubaneswar. The workman stated in his evidence that the F.C.I. at Hirakud had two sections. One was the depot which was supplying paddy to the mill for milling and the other was the mill which was sending rice to the depot after milling and both the sections were under the Management of the Regional Manager, F.C.I., Bhubaneswar. There is no evidence before me to show that the Modern Rice Mill was a separate and distinct entity so as to be termed as an "undertaking" for the purpose of the Industrial Disputes Act. The documents filed on behalf of the Management rather indicate that the Orissa zone of the F.C.I. was considered as one undertaking. Such question came up for consideration in the case of Avon Services (Production Agencies) Pvt. Limited Vrs. Industrial Tribunal, Haryana, Faridabad and others, reported in 1979 (I) LLJ 1. Though the facts of the said case are different from the present one, the meaning of the expression "undertaking" has however been indicated therein. It has been held :—

"The expression 'undertaking' is not defined in the Act. It also finds its place in the definition of the expression 'industry' in Section 2(j). While ascertaining the amplitude of the expression 'undertaking' in the definition of the expression 'industry', noscitur a sociis canon of construction was invoked and a restricted meaning was assigned to it in Bangalore Sewerage Board V. Rajappa, (1978-1 LLJ 349); (1978) 3 S.C.R. 207 at 227. While thus reading down the expression, in the context of S. 25-FFF it must mean a separate and distinct business or commercial or trading or industrial activity. It cannot comprehend an infinitesimally small part of a manufacturing process."

In the circumstance, as per the discussions above, I would hold that Section 25-F of the Industrial Disputes Act was applicable to the second party workman and admittedly, the conditions of the said section having not been complied by the Management—First Party: the retrenchment of the second party—workman with effect from 3-12-1985 is illegal and unjustified.

11. Issue No. 4:—The retrenchment of the second party—workman having been held to be illegal and unjustified, he would be entitled to the normal relief of reinstatement with full back wages. In this case the second party—workman in his evidence has admitted that he is working as Home Guard at the Hirakud Police Station since January, 1986 and as a Home Guard he is being given work for 10 days every month and for each day of duty is paid allowance at the rate of Rs. 8.

In view of such evidence I would hold that the workman is entitled to reinstatement with full back wages minus Rs. 80 per month from January, 1986 till he is reinstated in his post. If the Management finds that he is a surplus hand, it is free to bring about termination of his services by retrenchment

after following the procedure laid down in the Industrial Disputes Act, 1947.

12. The reference is thus answered in the following manner :—

The action of the Management of the Food Corporation of India, Hirakud, Distt. Sambalpur in terminating Sri B. Jagannath Rao, Watchman from service with effect from 13-12-1985 is illegal and unjustified. He is entitled to reinstatement with full back wages minus Rs. 80 per month from January, 1986 till he is reinstated in his post.

S. K. MISRA, Presiding Officer

[No. 42012/151/86-D.II(B)]

नई दिल्ली, 5 दिसम्बर, 1988

का.प्र. 3651—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स ई.सी. लिम. की रीयल जाम्बाद यूनिट बाहुला कोलियरी के प्रबंधन के सम्बन्ध निम्नलिखित और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.88 को प्राप्त हुआ था।

New Delhi, the 5th December, 1988

S.O. 3651.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Real Jambad Unit of Banula Colliery of M/s. E. C. Ltd. and their workmen, which was received by the Central Government on the 28th November 1988.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, ASANSOL

Reference No. 64/88

PARTIES :

Employers in relation to the management of Real Jambad

Unit of Bahula Colliery of M/s. E.C. Ltd.

AND

their workman.

APPEARANCES :

For the Employers—None.

For the Workman—None.

INDUSTRY : Coal

STATE : West Bengal

Asansol, the 18th November, 1988

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred on them U/s. 10(1)(d) of the Industrial Disputes Act, 1947 referred the dispute to this Tribunal for adjudication under Order No. L-19012 (17)/85-D.IV(B)/Vol. II dated the 2nd September, 1988.

SCHEDULE

"Whether the action of the management of Real Jambad Unit of Bahula Colliery of M/s. E.C. Ltd., in dismissing Sri Kanta Singh, Ex. Security guard, was justified? If not, to what relief the workman concerned is entitled?"

The present Reference dated 2-9-88 was received from the Ministry by this Tribunal on 19-9-88. On receipt of the Reference it was registered as Reference Case No. 64/88 in this Tribunal and a Regd. Notice was issued to both the

parties fixing the date on 6-10-88 for filing of written statement of the parties. It appears from the records that both the parties have received the regd. notices but shall neither party appeared not any step had been taken by them on 6-10-88. Even in spite of giving another date i.e. to say 2-11-88, neither the management nor the union took any step to file their written statements etc.

In view of the above circumstances, it appears that neither the workman represented by the union nor the management is interested to proceed with the case and accordingly it appears that no dispute between the parties exists.

In the circumstances, a 'no dispute' award is passed and the case is disposed of accordingly.

Requisite copies of the award are sent to the Ministry.

G. P. ROY, Presiding Officer
[F. No. I-19C12/17/85-D.IVB/Vol.III]

का.अ. 3652--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सिंगरानी कोलियरीज कम्पनी लिम. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-11-88 को प्राप्त हुआ था।

S.O. 3652.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Singareni Collieries Company Limited and their workmen, which was received by the Central Government on the 29th November, 1988.

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Hyderabad, the 11th November, 1988
Miscellaneous Petition No. 292 of 1986
IN

Industrial Dispute No. 56 of 1984
AND

Miscellaneous Petition No. 297/86 and
Miscellaneous Petition No. 427/86

BETWEEN :

Ennam Rajaiah, Tyndal Supervisor,
S. C. Co. Ltd., Mandamarri Division,
Adilabad District. (A. P.). Petitioner.
AND

1. The Chairman and Managing Director,
S.C. Co. Ltd., Kothagudem.
2. The General Manager, S.C. Co. Ltd.,
Mandamarri Division, Adilabad Dist., . . . Respondents.

APPEARANCES :

Mrs. G. Bikshapathi, G. Vidya Sagar, G. C. Venkata
Swamy and V. Vishwanatham, Advocates—for the
Petitioner—Workmen.

Sri K. Srinivasa Murthy and Kum. G. Sudha, Advocates
—for the Respondent-Management.

AWARD

All these matters are connected with and they arise out of the same proceedings. Hence it would be proper to dispose off all the matters by one single order.

2. M. P. No. 292 of 1986 in I.D. No. 56 of 1984. This is an application filed under Section 33A of the I.D. Act by Ennam Rajaiah, Tyndal Supervisor. The petition aver-

ments in brief are as follows.—The petitioner Ennam Rajaiah, aged about 42 years was first appointed as Tunnel Mazdoor in 1962. He was promoted from time to time; and at the time of filing this petition, he was working as Tyndal Supervisor which falls in Category V and his basic wages is Rs. 35.04 per day. The petitioner had to work underground under very strenuous circumstances exposing himself to severe health hazards. He had chest pain during 1976. The pain was severe and he was in Bellampally Area Hospital for treatment for about four months. Subsequently he was sent to the Main Hospital of the Company at Kothagudem. He was admitted in the hospital and after treatment, it was diagnosed as heart ailment. The Chief Officer, Kothagudem issued a certificate stating that the petitioner is medically unfit to work underground on account of heart disease. The Management has not taken any steps to offer the petitioner alternative employment of Tyndal Supervisor on surface. On the other hand the Superintendent of Mine, K. K. No. 5 Incline sought instructions from the Bellampally Hospital for further course of action regarding the petitioner. The petitioner was again directed to be admitted in the Main Hospital at Kothagudem for investigation. He was admitted in the hospital on 13th August 1986 and he was discharged on 20th August, 1986. The Chief Medical Officer after examination found that petitioner was fit for surface job with the condition that he should not undertake any heavy work nor handle heavy machinery. The petitioner was asked to report to Superintendent of Mines, K. K. No. 5 Incline. Accordingly he reported to the Superintendent of Mines on 21st August 1986. The Respondent and the subordinate officers are directing the petitioner to work as General Mazdoor on Category I wages. They are insisting that the petitioner should give an undertaking to work as a general mazdoor and threatening him that otherwise his services would be terminated.

2. The duties of Tyndal Supervisors are to allot the work to subordinate workers and to supervise their work. The post of General Mazdoor is not only an inferior post but it requires manual labour which was not recommended by the Medical authorities in the case of this petitioner. In a number of cases where the workmen working in the Mines were declared unfit medically they were given employment on surface level without loss of emoluments. There are several instances of this type. In these circumstances the Management cannot direct the petitioner to give an undertaking to work in the post of general mazdoor in Category I on the basic pay of Rs. 18.00 per day. He is entitled to Category V wages as Tyndal Supervisor. As the petitioner is one of the concerned workman in I.D. No. 56 of 1984 which is pending in the Tribunal this petition is filed. This dispute relate to withdrawal of privilege under Section 33 of the I. D. Act. The employer is prohibited from altering the service condition applicable to the workman. The action of the Management in insisting on an undertaking from the workers to work as general mazdoor with Category I wages is highly illegal. There are number of posts of Tyndal Supervisors on the surface level also. Such posts are there in the Workshop, Main Stores, Timberyard, Power House etc.,. The petitioner is entitled to work as Tyndal Supervisor in any Divisions anywhere in Singareni Collieries on the surface level. His emoluments have to be protected. The action of the Management is not in accordance with Section 33(2)(a) of the I.D. Act. If the petitioner is made to give an undertaking, he would be put to serious and irreparable loss and he would suffer very heavy financial loss. He would also be endangering his life because the duties of general mazdoor Category I involve manual labour. The Tribunal may be pleased to adjudicate this complaint as if it is a reference and pass an award holding that the action of the Management directing the petitioner to work as Category I General Mazdoor on surface is illegal and invalid. The Management may be directed to continue the petitioner as Tyndal Supervisor on surface on Category V wages.

3. After this petition was filed *ex parte* interim stay was granted by this Tribunal by its order dt. 5-9-1986, and the Management was directed "Not to disturb the petitioner from his present post of surface Tyndal Supervisor until the disposal of M. P. No. 292/86 on the file of this Tribunal." After this M. P. was filed some trouble arose between the Management and its Advocate on one side and the Presiding Officer of this Tribunal and there was complete non-cooperation between the Management and its Advocate and the

Presiding Officer of the Tribunal. A common memo. M.P. No. 421/86 was filed representing that they are moving High Court for transfer of all the cases of the Singareni Conneries to another Tribunal. No counter was filed in M. P. No. 292/86. It is unnecessary to go into the sordid details of the quarrel between the Management and the Tribunal as it is no longer of any importance due to the change of the Presiding Officer. Aggrieved by the interim stay orders granted in M. P. No. 297/86 the Management filed Writ Petition No. 13703/86 and in that Writ Petition in W.P.M.P. No. 17847/86 orders were obtained on 30th September, 1986 to the following effect : "Operation of the order in M. P. No. 297/86 in M. P. No. 292/86 in I.D. No. 56/84 on the file of the Industrial Tribunal, Andhra Pradesh, Hyderabad be and hereby is stayed, pending further orders on this petition." Accordingly the order in M. P. No. 297/86 was not implemented.

4. Simultaneously while these proceedings are pending the worker filed Writ Petition No. 16238/86 in the High Court seeking the same relief which he claims in the application under Section 33-A. The Writ Petition filed by the worker was finally decided by the High Court of Andhra Pradesh on 8th day of July 1988. Now the Management without filing any counter in M. P. No. 292/86 has filed a Memo with the copy of the judgement in Writ Petition No. 16238/86 and requested that in lieu of orders of the High Court dt. 8-7-1988 M. P. No. 292/86 and M. P. No. 297/86 is closed by passing similar orders.

5. A reading of the High Court order in Writ Petition No. 16238/86 clearly shows that the petitioner asked for similar relief which he asked for in M. P. 292/86. After he filed M.P. No. 292/86 and as he dt. not give an undertaking in writing to work as general mazdoor Category I the Management terminated his services w.e.f. 28-10-1986 and then he filed the writ petition, for a declaration that the proceedings dt. 28-10-1986 are illegal and arbitrary. He sought a direction to the Management to continue him as Tyndal Supervisor on surface in Category V wages. The stay order passed by this Tribunal was stayed on 30th September, 1986 by order in Writ Appeal No. 17847/86 in Writ Petition No. 13703/86 filed by the Management.

6. The High Court judgement now reveals that during the pendency of the Writ Petition the Writ Petitioner was allowed to work as general mazdoor only. The operative portion of the High Court judgement reads as follows :—"Having regard to the fact that the petitioner has been working as General Mazdoor during the pendency of the Writ Petition, I direct that if the Petitioner is willing to work as general mazdoor his services shall be continued by the Management as general mazdoor. It is open to the Management to consider the petitioner for the post of Tyndal Supervisor on surface provided he is found fit."

7. In view of the High Court order, there is nothing else which can be done by this Tribunal except to issue a similar direction and then close M. P. 292/86 as this is an application under Section 33A of the I.D. Act. An Award has to be passed as contemplated by Section 33A. Following the decision of the High Court in Writ Petition No. 16238/86 dt. 8-7-1988 I pass the award as follows :—

"Having regard to the fact that the petitioner has been working as general mazdoor on surface during the pendency of the Writ Petition and this M. P. I direct the Management to continue the petitioner as General Mazdoor if he is willing. Whenever an opportunity arises his claim may be considered for providing him a post of Tyndal Supervisor on surface in Category V or similar posts in Category V on surface wherein he would be able to work bearing in mind the restrictions imposed by the Medical Board."

8. M. P. No. 297/86 is terminated as it is no longer necessary and as it is infructuous by reason of stay order passed in Writ Petition M. P. No. 17847/86 dated 30th September, 1986 in Writ Petition No. 13703/86. M. P. No. 427/86 is also closed as it has become infructuous. M. P. No. 185/88 filed in M. P. No. 292/86 is herewith closed passing

orders in main M. P. No. 292/86 as per the judgement of the High Court.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 11th day of November, 1988.

INDUSTRIAL TRIBUNAL

Appendix of Evidence.

NIL

D. J. Jagannadha Raju, Industrial Tribunal

[F. No. L-22011/22/84-D.III(B)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 30 नवम्बर, 1988

का.आ. 3653—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा 91 के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लि. की सभी इकाईयों के नियमित कर्मचारियों की पहली अक्टूबर, 1988 से 30 सितम्बर, 1991 तक जिसमें यह दिन भी सम्मिलित है की अवधि के लिए उक्त अधिनियम के प्रवर्तन से छूट देती है।

2. पूर्वोक्त छूट शर्तें निम्नलिखित हैं, अर्थात् :—

(1) पूर्वोक्त कारखाना, जिसमें कर्मचारी नियोजित है, एक रजिस्टर रहेगा, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदानिधान दिखाएँ जाएँगे ;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएँ प्राप्त करते रहेंगे, जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व सन्दर्भ अधिनियमों के आधार पर हकदार हो जाते ;

(3) छूट प्राप्त अवधि के लिए यदि कोई अधिदाय पहले ही किए जा चुके हों तो वे वापस नहीं किए जाएँगे ;

(4) उक्त कारखाने का नियोजक, उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवर्तमान था (जिसे इसमें इसके पश्चात्, "उक्त अवधि" कहा गया है) ऐसी विवरणियाँ ऐसे प्राप्ति में और ऐसी निशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1959 के अधीन उसे उक्त अवधि की बाबत देती थीं ;

(5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक, या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी :—

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरणी की विशिष्टियों को स्थापित करने के प्रयोजनार्थ ;

(ii) यह अधिनियमित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं ; या

(iii) यह अधिनियमित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके प्रतिफल स्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं ; या

(iv) यह अधिनियमित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं ;

निम्नलिखित कार्य करने के लिए सशक्त होना :—

(क) प्रधान या प्रत्यक्ष नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ;

(ख) ऐसे प्रधान या अध्यक्षित नियोजक के अधिनोगत कितने कारखाने, स्थापन, कार्यालय या अन्य परिसर में कितने भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजूरी के संसार से संबंधित ऐसे लेखा, बहियाँ और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारियों के समक्ष प्रस्तुत करे और की परक्षा करने दे, या उन्हें ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं या

(ग) प्रधान या अध्यक्षित नियोजक को उसके अधिकारी या सेवक को, या ऐसे किसी व्यक्ति को जो ऐसे कारखाने, स्थापन कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदधारियों के पास यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखानों, स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा बही या अन्य दस्तावेज की नकल करना या उससे उद्धरण लेना।

[संख्या एस-38014/37/88-एस.एस.-I]

स्पष्टीकरण प्राप्त

इस मामले में छूट को भूतलकी प्रभाव देना आवश्यक हो गया है क्योंकि छूट के प्राबंदन पर कार्यवाही करने में समय लगा था। किन्तु यह प्रमाणित किया जाता है कि छूट को भूतलकी प्रभाव देने से किसी भी व्यक्ति के हित पर प्रतिकूल प्रभाव नहीं पड़ेगा।

New Delhi, the 30th November, 1938

S.O. 3653.—In exercise of the powers conferred by section 88 read with section 91A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of all the Units of M/s. Hindustan Petroleum Corporation Ltd., from the operation of the said Act for a period with effect from 1st October, 1938 upto and inclusive of the 30th September, 1991.

The above exemption is subject to the following conditions, namely:—

(1) The aforesaid factory wherein the employees are employed shall maintain a register showing the names and designations of the exempted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contribution for the exempted period, if already paid, shall not be refunded;

(4) The employer of the said factory shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any inspector appointed by the Corporation under sub-section (1) of section 45 of the said Act, or other official of the Corporation authorised in this behalf shall, for the purpose of—

(i) verifying the particulars contained in any return submitted under sub-section (1) of section 44 for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory be empowered to:—

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or

(b) enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises.

[File No. S-38014/37/88-SS.I]

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as the processing of application for exemption took time. However, it is certified that the grant of exemption with retrospective effect will not affect the interest of anybody adversely.

नई दिल्ली, 1 दिसम्बर, 1938

का.प्र. 3654—केंद्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (6) के उपबन्धों के अनुसरण में, भारत सरकार के धर्म संचालय की अधिसूचना संख्या का.प्र. 1791 दिनांक 27 मई, 1938 द्वारा लोक प्रयत्न खनन उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 8 जून, 1938 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केंद्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (6) के परम्युक्त द्वारा प्रत्यक्ष शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 8 दिसम्बर, 1938 से छह मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/12/85-जी-1(ए)]

New Delhi, the 1st December, 1988

S.O. 3654.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 1791 dated the 27th May, 1988 the iron ore mining industry to be a public utility service for the purposes of the said Act, for a period of six months, from the 8th June, 1988;

And, whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act, for a further period of six months from the 8th December, 1988.

[No. S-11017/12/85-D.I(A)]

नई दिल्ली, 5 दिसम्बर, 1988

का.आ. 3655—तमिलनाडु राज्य सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (घ) के अनुसरण में श्री ए.पी. मधुसुवामी, के स्थान पर श्री जे.टी. आचार्यलू, सचिव तमिल नाडु राज्य सरकार को कर्मचारी राज्य बीमा निगम में उस राज्य का प्रतिनिधित्व करने के लिए नाम-निर्दिष्ट किया है ;

अतः, अब, केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 545 (अ) दिनांक 25 जुलाई, 1985 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, “(राज्य सरकार द्वारा धारा 4 के खण्ड (घ) के अधीन नामनिर्दिष्ट)” शीर्षक के नीचे मद 24 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जायेगी, अर्थात् :—

श्री जे.टी. आचार्यलू,

आयुक्त एवं सचिव तमिलनाडु राज्य सरकार,

श्रम और रोजगार विभाग,

मद्रास।

[संख्या यू-16012/12/88-एस.एस. I]

New Delhi, the 5th December, 1988

S.O. 3655.—Whereas the State Government of Tamil Nadu has in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948) nominated Sh. J. T. Acharyulu, Commissioner and Secretary to the Govt. of Tamil Nadu, to represent that State on the Employees' State Insurance Corporation, in place of Shri A. P. Muthuswami,

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 545(E), dated the 25th July, 1985, namely:—

In the said notification, under the heading “(Nominated by the State Government under clause (d) of section 4)”, for the entry against Serial Number 24, the following entry shall be substituted, namely :

Sh. J. T. Acharyulu,

Commissioner & Secretary to the Govt. of Tamil Nadu,
Labour and Employment Department,
Madras.

[No. U-16012/12/88-SS.I]

का.आ. 3656—मेघालय राज्य सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (घ) के अनुसरण में श्री एम. शर्माधियू के स्थान पर श्री बी. कांहुनी, अधिवासी, आयुक्त, मेघालय सरकार को कर्मचारी राज्य बीमा निगम में उस राज्य का प्रतिनिधित्व करने के लिए नामनिर्दिष्ट किया है;

अतः, अब, केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 545 (अ) दिनांक 25 जुलाई, 1985 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, “(राज्य सरकार द्वारा धारा 4 के खण्ड (घ) के अधीन नामनिर्दिष्ट)” शीर्षक के नीचे मद 19 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जायेगी, अर्थात् :—

श्री बी. कांहुनी,

अधिवासी आयुक्त, मेघालय सरकार,

मेघालय भवन,

नई दिल्ली।

[संख्या यू-16012/14/88-एस.एस.-I]

S.O. 3656.—Whereas the State Government of Meghalaya has, in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948) nominated Sh. V. Kohli, Resident Commissioner-Govt. of Meghalaya to represent that State on the Employees' State Insurance Corporation, in place of Shri M. Thanghiew;

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Labour S.O. No. 545(E), dated the 25th July, 1985, namely :—

In the said notification under the heading “(Nominated by the State Government under clause (d) of section 4)”, for the entry against Serial Number 19, the following entry shall be substituted, namely :—

Sh. V. Kohli,

Resident Commissioner, Govt. of Meghalaya,

Meghalaya House,

New Delhi.

[No. U-16012/14/88-SS I]

का.आ. 3657—मध्य प्रदेश सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के खण्ड (घ) के अनुसरण में श्री मती किरण विजय सिंह के स्थान पर श्री के.डी. सक्सेना, प्रमुख सचिव, श्रम विभाग, मध्य प्रदेश सरकार को कर्मचारी राज्य बीमा निगम में उस राज्य का प्रतिनिधित्व करने के लिए नामनिर्दिष्ट किया है;

अतः, अब, केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 545 (अ) दिनांक 25 जुलाई, 1985 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, “(राज्य सरकार द्वारा धारा 4 के खण्ड (घ) के अधीन नामनिर्दिष्ट)” शीर्षक के नीचे मद 17 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जायेगी, अर्थात् :—

श्री के. डी. सक्सेना,

प्रमुख सचिव, मध्य प्रदेश सरकार,

श्रम विभाग,

भोपाल

[संख्या यू-16012/15/88-एस.एस.-I]

ए.के. भट्टाचार्य, श्रम सचिव,

S.O. 3657.—Whereas the State Government of Madhya Pradesh has, in pursuance of clause (d) of section 4 of the Employee State Insurance Act, 1948 (34 of 1948) nominated Sh. K. D. Saxena, Principal Secretary, Labour Deptt., Govt. of Madhya Pradesh to represent that State on the Employees' State Insurance Corporation, in place of Smt. Kiran Vijay Singh;

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 545(E), dated the 25th July, 1985, namely :—

In the said notification, under the heading "(Nominated by the State Government under clause (d) of section 4)", for the entry against Serial Number 17, the following entry shall be substituted, namely :—

Sh. K. D. Saxena,
Principal Secretary to the Govt. of Madhya Pradesh,
Labour Deptt., Govt. of Madhya Pradesh,
Bhopal.

[No. U-10012/15/88-SS.I]
A. K. BHATTARAI, Under Secy.

नई दिल्ली, 30 नवम्बर, 1988

नं. प्र. 3658:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ मैसूर के प्रबन्धन के संबंध में नियंत्रकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, बंगलूर के पंचाट को प्रभावित करती है, जो केन्द्रीय सरकार को 18 नवम्बर, 1988 को प्राप्त हुआ था।

New Delhi, the 30th November, 1988

S.O. —In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Mysore and their workmen, which was received by the Central Government on the 18th November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated, the 2nd November, 1988.

PRESENT :

Shri B. N. Lalge, (B.A.) Hons LL.B., Presiding Officer.

Central Reference No. 152/87

I PARTY:

Shri N. Ramkumar,
s/o Late R. S. Narayana Rao,
c/o S. G. Narayana Rao,
Advocate, 1416/A,
III Main Road,
K. M. Puram,
Mysore-4.

II PARTY:

1. The General Manager,
State Bank of Mysore,
E.M. (6), Secretariat,
P.B. No. 9727, K. G. Road,
Bangalore-560009.

Not permitted
by the Tribunal
for being imple-
ded.

2. The Regional Manager,
State Bank of Mysore,
Region No. I, Kuvempunagar,
Mysore.
3. The Manager,
State Bank of Mysore,
Jayanagar Branch,
Mysore City-1.
4. H. R. Venkoba Rao,
Head Dephory,
c/o Sl. No. 2,
Kuvempunagar,
The Regional Manager,
S. B. M. Region No. 1,
Mysore.

APPEARANCES :

For the I Party—Shri S. G. Narayana Rao, Advocate.

For the II Party—Shri M. C. Jayakumar, Advocate.

AWARD

By exercising its powers under section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its order No. L-12012/126/87-D, II(A) dated 11th September, 1987.

POINT OF DISPUTE

"Whether the action of the management of State Bank of Mysore in terminating the service of Shri N. Ramkumar, Janta Deposit Collector, with effect from 30th December, 1983 is justified? If not, to what relief is the workman entitled?"

2. The first party workman has filed his claim statement and the averments made by him, in brief, are as follows:

He was employed as a deposit collector under the Janta Deposit Scheme. He was appointed to promote the banking business at Mysore. He served from 1st May, 1977 to 29th December, 1983, for 6 years and 7 months. An agreement was executed as per the letter of the manager dated 1st May, 1977. The second party had agreed to pay him 3-1/2 per cent on all the Janta Deposits Collected by him. The second party has not settled the accounts and determined the amount to be paid to him. The second party has no right to terminate his services arbitrarily. The termination of his service w.e.f. 29th December, 1983 without giving him an opportunity of being heard is illegal. The second party bank has retained a sum of Rs. 4000 belonging to him. It is not explained as to how he can be held liable for the acts of misconduct of one Venkobarao. They have retained Venkobarao in their service after some farse of an enquiry. Then legal notices were issued to them. Some reply dated 29th March, 1986 was sent to him on untenable grounds. Hence, it is prayed that the order of termination may be set aside and consequential benefits may be granted.

3. No. 1 of the second party, has filed its objections and inter alia it is contended as follows:

It is true that he was working as a Janta Deposit Collector. It is denied that he was employed by them. He was not a workman as defined in the I.D. Act. It is true that his service as a deposit collector was discontinued. A letter of appointment dated 1st May, 1977 was issued to him. Under the said letter the management had reserved the right to terminate his services at any time, without assigning any reason. He was entitled to commission of 3.5 per cent only, and nothing else. There were several complaints against him including acts of misappropriation etc. His work was found to be unsatisfactory. Sufficient opportunity was given to him, to correct himself. He made admissions about several complaints. However, he did not improve. The bank felt that his continuance as a Janta Deposit Collector would affect the interests of the bank. The bank, perforce had to discontinue his services. He has to pay large amounts of money collected by him from various persons. There is no employer-

employee relationship between the bank and the first party. He has put forth untenable grounds and falsely alleges that the bank has acted with any mala fide intention. He is not entitled to any relief. The reference may be rejected.

4. Though the first party Ramkumar had shown the Regional Manager and General Manager and one Venkobarao as respondents Nos. 2, 3, and 4 he was informed that unless he seek and order from this Tribunal to implead them as parties, they cannot be arrayed as parties.

5. The first party Ramkumar had filed an application marked as I.A. No. 1 under section 10 of the I. D. Act read with order I rule 10 of the C.P.C. for impleading respondents Nos. 2, 3 and 4. Objections were received from them and parties were heard. A considered order dated 4-5-88 has been passed rejecting the prayer of the first party to implead the said respondents Nos. 2, 3, and 4.

6. In view of the aforesaid pleadings one additional issue was framed as shown below :

Whether the I party proves that he was a workman of the II party bank and whether this Tribunal has the jurisdiction to entertain the dispute?

7. It was taken up as a preliminary issue.

8. The first party Ramkumar examined himself and got marked Exs. W-1 to W-12.

9. The second party management examined one witness and got marked Exs. M-1 to M-3.

10. The parties were heard on the said issue.

11. By an order dated 27-9-88 a finding has been recorded on the said issue that the first party Ramkumar was not a workman of the second party within the meaning of section 2 (s) of the I. D. Act and that the reference is not maintainable.

12. The parties, were however not heard on the point as to why the reference should not be rejected. They were called upon to argue on the said point.

13. The matter was heard in that connection.

14. In the oral submission made by the learned counsel for the first party and also in the written arguments filed by him, it has been contended that the first party Ram Kumar was a workman within the meaning of section 2 (s) of the I.D. Act and that this Tribunal has the jurisdiction, and that the contention of the second party that he was not a workman has no force. In my view, this Tribunal is not invested with the Jurisdiction to review its own order and if the first party Ramkumar is aggrieved by the said finding, he shall have to seek some other forum. Under the Circumstances it will not be possible for this Tribunal to refer to the authorities shown in the written arguments or to discuss about same matter once-again.

15. The learning counsel for the first party did not submit any other argument as to why the reference should not be rejected in view of the finding recorded on the additional issue. In view of the said finding, it follows that the reference cannot be maintained.

16. In the result, an award is passed to the effect that Shri N. Ramkumar, Janta Deposit Collector was not a workman of the second party within the meaning of section 2(s) of the I. D. Act and that the reference cannot be maintained. It is held that this Tribunal has no jurisdiction to entertain the reference. Thus the reference is rejected. Copy of the finding recorded on the preliminary issue is enclosed and it shall form part of the award.

(Dictated to the personal assistant taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE

Dated, 27th December, 1988

PRESENT

Shri. B. N. Lalge, B. A. (Hons) LL.B. Presiding Officer
Central Reference No. 152/87

I PARTY

Shri. N. Ramkumar,
C/o S. G. Narayana Rao,
Advocate, 1416/A, III
Main Road, K. M. Puram,
Mysore-4.
Vs.

II PARTY

General Manager,
State Bank of Mysore,
Sect. P.B. No. 9727,
K. G. Road,
Bangalore-9.

ORDER ON PRELIMINARY ISSUE

On receipt of the order of reference, notices were issued to the parties. They have appeared and filed their pleadings.

2. In the claim statement filed by the first party workman, inter alia it is contended that the first party was appointed as Janta Deposit Collector to promote the banking business of the second party and he has worked from 1st May, 1977 to 29th December, 1983, and that he was getting payment of 3-1/2 per cent of the deposits. It is then contended that the termination of his service is illegal and that he is entitled to reinstatement and consequential benefits.

3. In the counter statement filed by the State Bank of Mysore, the second party, inter alia, it is contended that the first party was not a workman as defined in the I.D. Act and that he was discontinued as a deposit collector. It has been further contended that as per the letter of appointment dated 1st May, 1977, the bank had the right to terminate his engagement without any reasons and that the reference is not maintainable.

4. On 1st January, 1987 the following additional issue was raised, in view of the said pleadings.

Whether the I party proves that he was a workman of the II party bank and whether this Tribunal has the jurisdiction to entertain the dispute.

5. The said issue is taken up as a preliminary issue.

6. The workman has examined himself and Exs. W-1 to W-12 have been got marked.

7. One witness has been examined for the management and Exs. M-1 to M-3 have been got marked.

8. The parties have been heard.

9. My finding on the said issue is as follows.

10. The first party was not a workman within the meaning of section 2(s) of the I.D. Act, and the reference is not maintainable.

REASONS

11. The learned counsel for the second party contended that there was no employer employee relationship between the parties and that the first party was not a workman within the meaning of section 2(s) of the I.D. Act. In order to prove that he was a workman, the first party Ramkumar has produced as many as twelve documents and in addition he has examined himself. WW-1 Ramkumar has admitted in para 10 of his evidence that Ex. M-1 is the letter of appointment issued to him. It is further conceded by him that he had executed an agreement deed but, however he states that he does not know whether Ex. M-2 is the said agreement deed. However, he admits that the signatures at Exs. M-2(a) and M-2(b) are his. Since the signatures are admitted and since there is the corroborating evidence of MW-1 to substantiate the agreement Ex. M-2. I find that the terms and conditions of service of the first party shall have to be gathered from Exs. M-1 and M-2. Ex. M-1 is a letter dated 1st May, 1977

issued by the second party to the first party Ramkumar. It states that he had been selected as Janatha Deposit Collector and he was offered the said work on certain conditions. The conditions are that he should furnish cash security deposit of Rs. 1,000 furnish a fidelity Insurance Policy for Rs. 10,000 that he should execute an agreement for having accepted the conditions and that he is entitled to 3-1/2 per cent of the deposits and he will be paid in the first week of every month. One more condition is shown in Ex. M-1 that the bank has the right to terminate his engagement without assigning any reasons. Below Ex. M-1 there is the endorsement and signature of first party Ramkumar that he had accepted the terms and conditions. Ex. M-2 shows as many as four conditions as to how the work should be carried out by the first party Ramkumar and it further sets out, the other condition under which his agency can be terminated. Term No. 2 states that he is not entitled to any other remuneration allowance and that his agency would commence from the date of execution of the document. It is further stated that he shall have to get conversant with the Janatha Deposit Scheme and the concerned rules and collect the deposits accordingly. It is admitted by WW-1 Ramkumar, that he had received notice Ex. M-3. In Ex. M-3 also the second party has stated that he was only a Janatha Deposit Collector. MW-1 Ashok Kumar, the bank Manager has sworn that Ramkumar was only a Janatha Deposit Collector and used to receive 3-1/2 per cent of the deposits as his commission. In para 5 of his evidence he states that he was not given any direction that he should collect a particular amount on a particular day, and that there was no control or supervision of the bank on his work. In the cross-examination he has denied the suggestion that the first party was workman working in the bank. In para 15 he has denied that if Ramkumar had to go on leave he had to give an application. On the other hand, WW-1 Ramkumar has sworn that he has worked with the bank as their workman. Ex. W-1 is the legal notice issued by the first party on 26th January, 1986. In Ex. W-1 it has been stated that Ramkumar was appointed as a pigmy collector in the second party and he had worked as such for about six years and seven months. Ex. W-2 is the postal acknowledgement for the said notice. Ex. W-3 is the reply sent by the second party to the notice Ex. W-1. In Ex. W-3 the second party bank has stated that as per the terms and conditions of the agreement dated 1st May, 1977 the first party Ramkumar was to act as the representative for publicity and collection and was bound by the rules. Ex. W-4 is another notice sent by the first party on 31st March, 1986. There is also the first party has contended that he was a pigmy collector. Ex. W-5 is the postal acknowledgement due for Ex. W-4. Ex. W-6 dated 19th April, 1986 is a reply by the second party to the notice, Ex. W-4. It has been stated in Ex. W-6 that the matter had been referred to the zonal office. Ex. W-7 dated 2nd May, 1986 is another notice by the Advocate of the first party. In para 1 of Ex. W-7 it is admitted that the first party Ramkumar was taken as a deposit collector under the Janatha Deposit Scheme. Ex. W-8, W-10 and W-11 are the postal acknowledgements for Ex. W-7 and W-9. Ex. W-7 does not help the first party to show that he was appointed as a workman to do work in the bank. Ex. W-9 dated 17th August, 1986 is another notice sent by the first party. The letter makes reference to Ex. M-1 dated 1st May, 1977. The first party workman cannot thus escape the consequence that he was appointed as per the terms and conditions of the Ex. M-1. Ex. W-12 is the paper publication issued by the second party. The second party has stated that the first party Ramkumar was engaged as Janatha Deposit agent and that his engagement had been terminated. The documents produced by the first party do not show that he was engaged to work under the supervision and control of the second party bank. A distinction requires to be made between a contract for services and a contract of services. In the first case the master can order or require what is to be done, while as, in the second case he can, not only order or require what is to be done, but also how it shall be done. In the contract for service the work done by another person is not an integral part of the business of another, but it is only an accessory to it. The condition to do work subject to the control of the other party is a necessary condition of a contract of service whereas it is not so in the contract for service. It is not the case of the first party that he had to go to a specific area or to visit specific persons and collect specific amounts of deposits at a specified time in the course of a day, or that his work was under constant control and supervision of any

officer of the bank. The element of control and supervision of his work is lacking and therefore I am of the view that the engagement of the first party cannot be called that it was a contract of service. It was only a contract for service.

12. In the result, it is held that the first party has not proved that he was a workman within the meaning of section 2(s) of the I.D. Act. The reference is not maintainable.

13. However, the parties have not been heard as to why an award should not be passed accordingly. Parties have been therefore given further opportunity to argue on the said point.

(Dictated to the Personal Assistant taken down by her, got typed and correct by me).

B. N. LALGE, Presiding Officer
[No. L-12012/126/87-D.II(A)/D. III(A)]

नई दिल्ली, 6 दिसम्बर, 1988.

का.आ. 3659—औद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, कटाह के प्रबन्धन के संबंध नियोजकों और उनके कार्यकर्ता के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रधिकरण कानपुर के संघट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30 नवम्बर, 1988 को प्राप्त हुआ था।

New Delhi, the 6th December, 1988

S.O. 3659.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India, Katgarh (Moradabad Branch) and their workmen, which was received by the Central Government on the 30th November, 1988.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
PANDU NAGAR, KANPUR (U.P.)

Industrial Dispute No. 44 of 1987

In the matter of dispute between :

Shri Krishna Mohan
C/o Shri Arun Kumar Agrawal
29 Marwari Gali
Aminabad,
Lucknow U. P.

AND

The Regional Manager
Region No. IV
Regional Officer
State Bank of India
148 Civil Line
Bareilly U. P.

AWARD

The Central Government, Ministry of Labour, vide its notification No. L-12012/335/86, D-II(A) dt. 24th April, 1987, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of State Bank of India in relation to their Katgarh (Moradabad) Branch in dismissing Shri Krishna Mohan, Godown Keeper-cum-Clerk from service on 11-1-85 is justified? If not, to what relief the workman is entitled to?

2 The admitted facts are that while the workman was posted as Godown Keeper at Branch Office, Katgarh, State Bank of India (hereinafter referred to as Bank) he was

placed under suspension on 22-7-80, and was served with chargesheet dt. 10-8-82, copy Ext. M-1, containing the following charge on 11-8-82 :—

On 18th February, 1980 when the Katghar (Moradabad) Branch Manager, accompanied by you checked the godown of M/s. Shree Metal Industries, Moradabad, the stocks of Patti Circles, Doll and Mug valued at Rs. 88,950 were found short, in your presence. The godown was under your charge and you had been conducting pledge and delivery operation. The last operations of pledge and delivery were conducted by you on the 12th February, 1980 and since that day till the 18th February no operation was made in the godown. No indication of tampering with the godown lock or otherwise forced removal of stocks was found and obviously you in collusion with the borrowers helped them in removing the stocks from the godown surreptitiously.

The charge was emphatically denied by the workman vide his reply dt. 24-8-82, copy Ext. M-2, Enquiry into the said charge was held by Shri R. Chandra, who on conclusion of inquiry gave his findings, copy Ext. M-5, on 27-4-84, holding the charge as proved. After considering the findings given by the Enquiry Officer and agreeing with it the Regional Manager, Region IV, who happened to be the Disciplinary Authority, in pursuance of his order dt. 1-8-84, copy Ext. M-6, issued a show cause notice, copy Ext. M-VII the same day to the workman. With the copy of notice, copy of the findings recorded by the E.O. etc., were enclosed. The workman gave his reply dt. 25-9-84, copy Ext. M-8, after considering which the Disciplinary Authority by means of his order dt. 11-1-85 confirmed the show cause notice and dismissed the workman from service in terms of para 521(5)(a) of Shastri Award and communicated the same to the workman by means of his letter dt. 11-1-85, copy Ext. M-10. Alongwith the letter the Disciplinary Authority, sent to the workman the copy of his order. Against the said order dt. 11-1-85, the workman filed an appeal. Ext. M-11 is the copy of grounds of appeal. The appeal was, however, dismissed by the Chief Regional Manager, the Appellate Authority, by his order dt. 29-4-85, copy Ext. M-12.

3. The workman has assailed the order dismissing him from service on a number of grounds. According to him, the charge sheet served on him was vague and it was not accompanied by copies of documents on which management placed reliance. Secondly, the findings of the P. O. was based on hearsay evidence. He was not the sole operator of godown keys and at the relevant time the keys of the godown were in the exclusive custody of the then branch manager. The appeal filed by him was also rejected by the appellate authority by means of a non speaking order. He has, therefore, prayed that after setting aside the order of his dismissal from service he be reinstated in service with full back wages, and other benefits.

6. On the other hand the management pleads that Shri V. V. Mangalvedkar, the authorised representative for the workman, is not legally competent to represent the workman as he has not espoused the cause of the workman under section 2(A) I.D. Act. Besides the case of the workman has not been espoused by a recognised union of the bank, such as the State Bank of India Staff Association and as such the case is not maintainable under section 2(k) of the I.D. Act. According to the management, the enquiry was fairly and properly conducted and that the finding arrived at by the E.O. was neither perverse nor it suffered from any infirmity. It is established law that the Appellate Authority need not give any reason in the order when it concurs with the findings of the Disciplinary Authority. However, in the instant case, the Appellate Authority, passed a speaking order. The workman was dismissed from service on the basis of proved misconduct.

7. In support of his case, the workman has filed his own affidavit and in support of its case, the management has filed the affidavit of Shri Arant Swarup Bhasin an Officer of the Bank.

8. Let us consider the various contentions of the workman assailing the order of dismissal from service one by one.

9. The first ground taken by the workman is that the charge sheet is vague. Ext. M-1 is the copy of chargesheet dated 1-8-82, which was received by the workman on 11-8-82. On going through it I do not find it vague in any manner. The charge is as clear as day. Therefore, I find no force in the first contention.

10. The second contention of the workman is that he was not furnished with the copies of documents relied upon by the management alongwith the chargesheet and as a consequence of it he was greatly handicapped in his defence. There is no doubt about the fact that alongwith the chargesheet the workman was not served or furnished any copy of documents. For the first time it was on 18-2-83, the first date on which the inquiry proceedings started, the Presenting Officer on behalf of the management furnished the list of documents with names of witnesses on which the management would place reliance. At page 3 of the inquiry proceedings of the said date the following sentence appears :

"The documents produced in the inquiry were perused by all concerned."

There is nothing to show that the workman or his defence representative ever made any prayer for being furnished with the copies of documents which on being produced by the Presenting Officer were perused by him. In his cross examination, the workman has stated that during the inquiry proceedings he never raised any objection in writing to the effect that the copies of documents had not been furnished to him by the management. He has further stated that he also raised no objection to the effect that the inquiry proceedings had not been conducted fairly and properly. There is also nothing to show that the workman was in any way prejudiced on account of non furnishing of copies of documents by the management. Having perused the documents about most of which the workman was fully aware, it cannot be said in the circumstances stated above that he was in any way prejudiced. Therefore, in the second contention too I find no force.

11. Thirdly, in the written arguments submitted on his behalf it has been stated that the request of the defence representative for summoning some of the documents was turned down by the inquiry officer. In this connection we will have look to the inquiry proceedings dt. 15-3-83. It appears that a prayer was made before the E.O. by the defence representative for orders to the banks representative to make available—(1), Delivery order dt. 16-2-79 of M/s. Karan Singh Balwant Singh, (2) Godown Cards of the Godown of M/s. U. P. Tractors Shree Metal Industries, Karan Singh Balwant Singh, (3) Recurring deposit slip of Shri Hariom Chhabra Account No. 256-A credit vouchers dt. 4-7-78 and 7-11-78. The E.O. allowed the prayer with regard to the production of records relating to Shree Metal Industries and disallowed the same with regard to the production of other records on the ground that they had no relevancy to the chargesheet.

12. After considering the prayer with regard to the above documents made by the defence representative, I find no irregularity or illegality in the order of the Enquiry Officer. It is perfectly a just and legal order. In this connection I would like to refer to workman's reply dt. 25-2-84, copy Ext. M-8, to show cause notice dt. 1-8-84 given to him by the disciplinary authority. In para 2(iv) it was stated by the workman that he was relieved from the branch on his permanent transfer to Chandhausi Branch vide branch memorandum dt. 9-2-80, by which he was stood relieved at the close of business on 16-2-80. He further writes in the said para that had he been in connivance with the firm in removal of stocks he would not have attended the bank on 18-2-80 at the request of Shri Amar Nath, the Branch Manager for the purpose of checking of Godown. The case of the management before the E.O. was that since checking of the godown looked after by the workman checking could not be made, the branch manager informed the workman that he would not stand relieved on 16-2-80 so that godown could be checked. In his order dt. 1-8-84, copy Ext. M-6, the Disciplinary authority observed that the employee was relieved without making any arrangement for taking over charge on 16-2-80. As such there was nothing wrong if the branch manager called him back on subsequent working day i.e. 18-2-80 for

inspection of godown for taking over charge of the godown himself. The observation appears to be quite just and proper. Although he was informed that he would be relieved on 16-2-80, the order of relieving him could be changed by the branch manager if by then he had been unable to check the godowns of which the workman was the godown keeper. There was no impropriety in it on the part of the branch manager.

13. Now I would like to refer to para 2(vi) of the reply of the workman. He writes that the stocks in the godown were found correct on 28-12-79, when the Field Officer physically verified them from the branch records. They were also found alright upto 12-2-80 when the last operation of the godown was carried by him. The shortage was effected during the period 12-2-80 to 18-2-80. He has admitted the shortage in very clear terms not only in this sub-para but also in sub-para (i). In sub-para (i) he writes that as soon as he entered into the godown of M/s. Shree Metal Industries, on 18-2-80 he was shocked to see that the stocks of substantial amount had been removed from there without any sign of tampering with the lock.

14. Therefore, the simple question to be considered was as to how the shortage had taken place after 12-2-80 in the Godown of M/s. Shree Metal Industries. It had nothing to do with the other records sought to be summoned by the defence representative. There is no plea on the part of the workman that there had been any tampering of lock put on the godown between 12-2-80 to 18-2-80. I, therefore, find no force in this contention.

15. Fourthly, it has been contended from the side of the workman that goods from the godown were removed by the firm in connivance with the branch manager. There is absolutely no evidence nor any circumstance to support it. Even in his reply copy Ext. M-8, to the show cause notice he did not cast any aspersion on the conduct of the branch manager. Rather from sub-para (v) it appears that the branch manager had taken all the necessary precautions to safeguard the interest of the bank. In the said para the workman writes that as Shri Amar Nath, the Branch Manager had a doubt on the integrity of the borrowers he wrote a D.O. Letter on 17-12-79 to Local Head Office, referring to the unsatisfactory features. He got the property of the partners of the firm equitable mortgaged to the bank for the existing cash credit limit without extending any additional financial accommodation to them. Thus this argument advanced on behalf of the workman also fails. In sub-para (iv) of his reply he described the borrowers as cheats. According to him it were they who have duped the bank.

16. Then it has been contended that the findings given by the E.O. are perverse. I do not agree with it. If there was any thing lacking it was discussed by the disciplinary authority point by point with reference to the points raised by the workman in his reply to the show cause notice. Even an ordinary prudent man would have arrived at the same conclusion.

17. I have already referred to the statement made by the workman in his cross examination that during the inquiry proceedings he never raised the point that proceedings were not being conducted fairly and properly.

18. The last point urged on behalf of the workman is that the workman's appeal was dismissed by the appellate authority by a non speaking order. Ext. M-12, is the copy of order dt. 29-11-85 of the CRM, the appellate authority. If one goes through the order, one will not be in a position to say that it is a non speaking order. The punishment, in the circumstances of the case, awarded to him calls for no interference.

19. Thus from the discussion of facts, circumstances and evidence made above, I held that the action of the management of State Bank of India in relation to their Kather Branch Office (Moradabad) in dismissing Shri Krishna Mohan Godown Keeper-cum-clerk from service on 11-1-85 is justified. The result is that the workman is entitled to no relief.

20. The reference is answered accordingly.

ARIJAN DEV, Presiding Officer
[No. I-12012/335/86-D IIA/IIIA]
P. V. SREEDHARAN, Desk Officer

नई दिल्ली, 30 नवम्बर, 1988

का.प्र. 3660—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्डियन ऑइल लि. बरोनी बिकार नदी के प्रबन्धन के सम्बन्ध में निदेशों और उनके कर्मचारियों के बीच, अनुबंध में निदेशों औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, न. 2 धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22/11/88 को प्राप्त हुआ था।

New Delhi, the 30th November, 1988

S.O. 3660.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Oil Corporation Limited Barauni Refinery and their workmen which was received by the Central Government on the 22nd November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri J. N. Sinha, Presiding Officer.

Reference No. 261 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act 1947

PARTIES:

Employers in relation to the management of Indian Oil Corporation Ltd. Barauni Refinery and their workmen.

APPEARANCES:

On behalf of the workmen: Shri S. N. Tewary, Secretary, Petroleum and Chemicals Mazdoor Union.

On behalf of the employers: Shri Jagdish Prasad, Dy. Manager.

STATE: Bihar.

INDUSTRY: Oil.

Dated, Dhanbad, the 16th November, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-30012/286-D.III(B)/IV(B) dated, the 18th September, 1987.

SCHEDULE

"Whether the action of the General Manager, Indian Oil Corporation, Barauni Oil Refinery is fair and justified in withholding one annual increment of Sri Bindeshwari Prasad Singh due on 1-7-83 with cumulative effect on the basis of the complaint of misconduct of remaining inside the premises beyond duty hours, made by the outside agency? If not, to what relief the workman concerned is entitled?"

The case of the management is that the concerned workman Bindeshwari Prasad Singh was working as an operator in Indian Oil Corporation Barauni Oil Refinery. He was duly chargesheeted under the provision of the certified standing orders of the company for misconduct for remaining within the premises of the refinery after authorised hours of his duty without due permission along with three others charges of misconduct. Considering the gravity of the charges levelled against him the management suspended him from duty pending enquiry. The concerned workman submitted his explanation to the chargesheet which was found not to be satisfactory by

the management and as such a domestic enquiry was ordered to be conducted into the charges levelled against him. The concerned workman participated in the enquiry and he was allowed assistance of a co-worker of his choice. After considering all the materials available before the enquiry officer, the concerned workman was found guilty of misconduct in respect of the charge of misconduct "remaining within the premises of the refinery after authorised hours of his duty without due permission" and the concerned workman was exonerated of the other above charges levelled against him. The disciplinary authority after examination of the proceeding of the enquiry and the findings of the enquiry officer concurred with the finding of the enquiry and taking a lenient view of the matter awarded the concerned workman the punishment of withholding of his two annual increments due, on 1-7-83 and 1-7-84 with cumulative effect. Thereafter he was allowed to resume his duties. After the above punishment was awarded to the concerned workman made an appeal to the G.M. who is the appellate authority under the provision of the Certified Standing Orders of the company. The appellate authority examined the entire case and the order of punishment etc. and taking a more lenient view reduced the punishment to withholding of one annual increment due on 1-7-83 with cumulative effect.

The concerned workman had been given full and fair opportunity to defend his case before the enquiry officer. Notice of enquiry on various dates were duly given to him and he fully participated in the enquiry. He was allowed to cross-examine the management's witnesses. The concerned workman examined himself and his co-worker as defence witness. Principles of natural justice were fully observed by the Enquiry Officer in conducting the enquiry proceeding. The materials produced before the Enquiry Officer fully supported the finding arrived at by the enquiry officer. The concerned workman had never protested regarding the denial of reasonable opportunity to him in the enquiry or against the enquiry in any other manner. The management was lenient in passing the order of punishment against him. On the above facts it has been submitted on behalf of the management that the concerned workman is entitled to no relief.

The case of the workmen is that on 4-3-80 the management of Barauni Refinery was celebrating safety week and the management of Barauni refinery had invited District Magistrate and Supdt. of Police of Begusarai besides other dignitaries of the district. The management of Barauni Refinery had also issued circular inviting workmen to participate in the safety week function in the fire fighting station which was the venue fixed for the function. On that day the concerned workman was on duty in morning shift from 6 A.M. to 2 P.M. and his place of work was AVU-III. As per circular of the management the concerned workman went to the fire fighting station to take part in the inaugural function of the safety week. After the function was over the concerned workman went to his unit. At about 1 P.M. he contacted the superior officer and requested for permission to go to first aid centre and requested for the out pass slip for going out of the unit as he was having some stomach pain. He was granted permission to go to the first aid centre and he was issued with an out pass slip. Accordingly he left the unit and reached the security gate and showed the out pass to the Sainik on duty. The Sainik examined his out pass slip and made necessary entry of time and date and allowed the concerned workman to go outside. When he was going out a Havaldar of Refinery outpost present at the gate asked him to meet the Asstt. Sub-Inspector of police who was inside the duty room of CISF. The concerned workman went inside the duty room of CISF and met Asstt. Sub-Inspector of refinery outpost. The Asstt. Sub-Inspector of Police told the concerned workman that he has come to arrest him on the basis of a non-bailable warrant of arrest issued by the Judicial Magistrate of Begusarai in connection with alleged theft case of a truck. The concerned workman denied that his connection with any theft case. The ASI did not arrest him and started talking about money to help him. The concerned workman became suspicious about the motive of the ASI and the concerned workman avoided him on the plea that he will arrange money and will see him. The ASI did not arrest him and allowed him to go out and arrange for the money. Thereafter the concerned workman went to the first aid centre where he was given medicine. After

taking medicine he went home and did not go to his duty unit upto 2 P.M. for punching out his card for tear of the ASI.

In connection with the celebration of the safety week the management had also organised exhibition of safety film in the refinery township on 4-3-87 at 7 P.M. The concerned workman came to the bus stand to board the bus for going to the township to see the safety film. He found the Havaldar standing at the bus stand who enquired about the money from the concerned workman. The concerned workman denied to give the money whereupon the Havaldar wanted to take him forcibly to the thana. The concerned workman resisted and boarded the running bus and went to the Refinery township. Subsequently he obtained bail from the Judicial Magistrate, Begusarai.

The Havaldar reported the matter to the ASI who instituted a case of minor scuffle against the concerned workman in the local Court which was subsequently dismissed. The ASI also submitted the report to the management of Barauni refinery requesting for taking departmental action against the concerned workman. In order to please the police and to victimise the concerned workman the management issued chargesheet of misconduct against the concerned workman on the basis of the report of the ASI in which one of the charges was that the concerned workman remained on the premises of the refinery after authorised hours of his duty (i.e. beyond 2 P.M.) without due permission besides other charges. The concerned workman submitted his explanation to the charges and thereafter the management ordered for a departmental enquiry against him. The concerned workman attended the enquiry where the management led witnesses as well as produced documents in support of the charges. The concerned workman also produced documents and defence witness. The enquiry officer held the concerned workman guilty which finding was accepted by the management and as punishment the management withheld two annual increments of the concerned workman which was subsequently reduced to one increment on appeal before the General Manager.

None of the officers of the management had reported that the concerned workman was found on the premises of the refinery after 2 P.M. on 4-3-80. No evidence was adduced by the management in spite of the charge that the concerned workman was found loitering on the premises of the refinery after 2 P.M. on 4-3-80. The concerned workman had produced documents as well as oral evidence that he did not come to the unit after 1.25 P.M. on 4-3-80 to punch his card at 2 P.M. He also produced evidence that he had got his attendance of 4-3-80 regularised subsequently. The enquiry officer had not considered the document and evidence produced by the concerned workman in his defence. The finding of the enquiry officer was perverse in respect of the charge of which he was found guilty. On the above facts it has been submitted that the punishment of withholding one increment of the concerned workman is not justified and that the said order should be set aside.

The workmen did not object to the fairness and propriety of the domestic enquiry into the charges levelled against him.

Now the only point for decision is whether the withholding of one annual increment of the concerned workman due from 1-7-83 with cumulative effect for misconduct of remaining inside the premises beyond duty hours made by the outside agency is justified. In other words we have to see whether the charge for which the concerned workman has been punished has been established against him and whether the punishment passed by the management is justified.

None of the parties adduced any oral evidence. The management produced the necessary documents relating to the enquiry proceeding and they are marked Ext. M-1 to M-9.

The workmen did not produce any document before this Tribunal.

Ext. M-1 dated 10-5-80 is the chargesheet which will show that the concerned workman was charged on 4 counts of misconduct under clause 21 (XXIX), XI, VII and (I) (B) of the Company's standing order. Ext. M-2 is the explana-

tion to the chargesheet filed by the concerned workman. Ext. M-5 dated 28-6-82 is the enquiry report. On perusal of the enquiry report it appears that the enquiry officer did not find the concerned workman guilty of item No. II and III of the chargesheet Ext. M-1. The enquiry officer, however, found the concerned workman guilty of the misconduct under 21 (XXIX) of the Certified Standing Orders which relates to the charge of being on the premises of the establishment after authorised hours of work without permission. The enquiry officer also held the concerned workman guilty of the misconduct under sub-clause 1(b) of clause 21 of the Company's Certified Standing Orders.

Clause 21(1)(b) of the Standing Orders is in respect of misconduct for breach of standing order or any law applicable to the refinery or any rules made thereunder. This charge is a general charge. It does not include any specific charge. This charge depends upon the breach of the standing order or law applicable to the refinery. The enquiry officer under this clause has not discussed as to which provision of the Standing Orders or law applicable to the refinery or rules made thereunder was contravened or breached by the concerned workman. The management also conceded that this charge does not deal with any specific act of misconduct against the concerned workman and as such the concerned workman cannot be held guilty of this charge. Accordingly I hold that the concerned workman is not guilty of clause 21(1)(b) of the Standing Orders.

Now the only charge which has been found by the enquiry officer to have been established against the concerned workman is the charge under clause 21 (XXIX) of the Certified Standing Orders.

Now let us examine the evidence and whether it has been established by the management that the concerned workman was found loitering on the premises of the establishment after authorised hours of work without permission. The hours of work of the concerned workman on the alleged date of occurrence, 4-3-80, was from 6 A.M. to 2 P.M. Hence it has to be seen whether the concerned workman was loitering or was on the premises of the establishment after 2 P.M. on 4-3-80.

It is the admitted case of the parties that the concerned workman took outpass pass and passed through gate No. 2 at about 1 P.M. on 4-3-80 and went to first aid for taking medicine. It is also in the evidence of the management's witnesses that the police personnel were waiting on gate No. 2 to arrest the concerned workman from the afternoon on 4-3-80. The said fact is also admitted by the concerned workman. The concerned workman came to gate No. 2 at about 12.45 P.M. on 4-3-80 and had a talk with ASI. These facts are admitted by both the parties. The concerned workman in his statement before the enquiry officer has stated that as he was feeling pain in the stomach he took an out pass for first aid building vide Ext. 4 around 1.25 P.M. and when he was coming out from the gate the ASI was sitting in the duty room. He stated that the ASI called him and told him that he was involved in a case and warrant of arrest was issued against him. He has stated that the ASI wanted to extract money from him and in order to avoid he told the ASI that he was going to hospital. He has further stated that he went to the hospital and after taking medicine he went to his home as he was not feeling well and did not again come back to join his duty which was till 2 P.M. on that date. He has stated that he came to the bus stand to go to the township at about 5 P.M. to see safety film and there he met a Police personnel who stated that the ASI wanted him in the thana with the money. He has stated that the constable caught hold of him but he got himself released from him and got into the running bus and went away and thereafter the Police falsely implicated him in a criminal case and also asked the management to take disciplinary action against him. Although the management witness stated before the enquiry officer that the concerned workman was seen coming at the gate from inside of the premises of the refinery, the said evidence appears to be inconsistent if we refer to the pass out slip which has been marked Ext. 4 by the Enquiry officer and forms part of the enquiry proceeding. Ext. W-4 shows that on 4-3-80 at about 1.15 P.M. the concerned workman went out of the refinery premises for going to the hospital. Ext. W-3 is the copy from the first aid Register dated 4-3-80 time 1.25 P.M. to show

that the concerned workman was given medicines. It will appear from the enquiry report Ext. M-5 itself that the enquiry officer found that the time of re-entry of the concerned workman in the refinery was not known and that there was no entry at the gate to show that the concerned workman had returned back within the refinery premises after he had received the medicines at the hospital. There is absolutely no witness who had seen the concerned workman either going inside the refinery premises after he had left for hospital or that the concerned workman was seen by any of the workmen after 2 P.M. in the refinery premises. If the concerned workman had again entered into the refinery premises there should have been an entry at the gate showing the time when the concerned workman entered inside the refinery premises of the gate. As there is no evidence on the point that the concerned workman had entered inside the refinery premises after he had left for the hospital, it appears quite probable that the concerned workman actually did not report for duty after he had left his work after taking permission for going to the hospital. Moreover, the case of the concerned workman, that he had seen the ASI at the gate who wanted to arrest him and that he had tried to avoid him will also show that it was quite possible that the concerned workman did not again report for duty after he had left for the hospital for fear of his being arrested at the gate by the police who according to the management witness was waiting at the gate for the concerned workman.

According to the concerned workman he was being apprehended by the police at about 5 P.M. when he was going to see cinema organised in connection with the safety week and at that time the concerned workman got himself freed and fled on the running bus. Had the concerned workman been prevented by the Police at 5 P.M. inside the gate it would not have been possible for the concerned workman to flee on the running bus which was outside the gate of the refinery premises. The management witnesses have stated that the concerned workman had got in a truck which was driven inside the refinery premises. If the concerned workman had fled to the refinery premises the police could have apprehended him as the entire refinery premises is surrounded by a compound wall. All these facts clearly establish that the concerned workman was neither seen loitering nor was seen on the premises of the establishment after his duty hours without permission. On the contrary he had already left the refinery premises with permission before the end of his duty hours and had not returned back within the refinery premises after he had left for the hospital. In the above view of the matter it appears that the charge under clause 21 (XXIX) of the Certified Standing has not been established against the concerned workman and the management was not justified in withholding one annual increment due on 1-7-83 with cumulative effect.

In the result, I hold that the action of the General Manager, Indian Oil Corporation, Barauni Oil Refinery in withholding one annual increment of the concerned workman Shri Bindeswari Prasad Singh due on 1-7-83 with cumulative effect on the basis of the complaint of misconduct of remaining inside the premises beyond duty hours is not at all justified. The order of the management finding the concerned workman guilty of the said charge is set aside and the punishment passed against him is also set aside. The management is directed not to stop his annual increment and to pay back the withheld increment due since the date of his stoppage within one month from the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-30012/2/86-D.III(B)]

का. प्र. 3861—औद्योगिक विवाद प्रशिक्षण, 1947 (1947 का 14 की धारा 17 के प्रावधानों में, केन्द्रीय सरकार मैसूरि मेटलक एंड इलेक्ट्रिकल प्राइवेट लि. के प्रबंधकों से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, सम्बंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रशिक्षण, नं० 2 बम्बई के पंचपट्ट की प्रकाशित करती है, जो केन्द्रीय सरकार को 22/11/88 को प्राप्त हुआ था।

S.O. 3661.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Metcalfe and Hodgkinsons Private Limited and their workmen, which was received by the Central Government on the 22nd November, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/29 of 1986

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

PARTIES :

Employers in relation to the management of M/s. Metcalfe and Hodgkinsons Pvt. Ltd.,

Their workmen.

AND

APPEARANCES :

For the Employers : Shri K. D. Boda, Advocate.

For the workmen : 1. Shri V. N. Salvi, Secretary, Bharatiya Kamgar Sena 2. Shri S. V. Parab, (One of the workmen).

INDUSTRY : Ports and Docks. STATE : Maharashtra.
Bombay, dated the 27th October, 1988

AWARD

The Central Government by their Order No. L-31011/5/85-D.IV(A) dated 30-7-1986 has referred the following industrial dispute for adjudication to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

- (i) "Whether the action of the management of M/s. Metcalfe and Hodgkinsons Pvt. Ltd., Bombay in denying the services of 21 workmen as per the list enclosed at Annexure 'X' with effect from 2nd October, 1982 is justified? If not, to what relief are the workmen concerned entitled?"
- (ii) "Whether the action of the management of M/s. Metcalfe and Hodgkinsons Pvt. Ltd., Bombay, in denying the work to 48 workmen as per the list attached at Annexure 'Y' with effect from 2nd October, 1982 is justified? If not, to what relief the workmen concerned are entitled?"

2. After the notices of this reference were served upon the parties, both the parties appeared before this Tribunal. The Secretary of Bharatiya Kamgar Sena filed the necessary statement of claim on behalf of the workmen in question challenging the action of the management of M/s. Metcalfe and Hodgkinson (Pvt.) Ltd., Bombay. The Director of the said management filed written statement on behalf of the management and also filed a further rejoinder to the statement of claim of the said Kamgar Sena. According to the management, the action taken by them was quite proper and just.

3. Pending this reference, the Secretary of Bharatiya Kamgar Sena and the Director of the said management filed an application dated 10-11-1987 stating that the parties have settled the dispute as per the settlement enclosed with that application, and as such the reference be disposed of. This settlement has been signed by the Secretary of the said Kamgar Sena, by its Advocate Shri Mohite and also by the Director of the said management. Para 5 of the settlement is material which reads thus :—

"5. It is further agreed by the workmen and the Union on their behalf that the payment as shown against each of the workers involved in the reference will be

in lieu of their demand as contained in the above reference and on receipt of the aforesaid payment there shall not remain any claim of the workmen against the management either relating to demand for reinstatement or re-employment or even a preference for service or any monetary claim.

Para 7 of the settlement reads as follows :

"7. The parties to the dispute further agree that in view of the aforesaid settlement, the workmen and the Union do not now desire to proceed further with the reference and the same may be disposed of being not pressed by the Union."

As per this settlement some of the workmen were to get Rs. 500, some were to get Rs. 1000, and some were to get Rs. 1500, as compensation.

4. After this settlement was led before this Tribunal on 10-11-1987 (when the Tribunal was not regularly functioning), on 3-3-1988 the workmen by name Shri S. V. Parab for himself and on behalf of other workmen filed an application stating that they were not aware about the said settlement made by the management and the Bharatiya Kamgar Sena, and as such it be not accepted by the Tribunal. The workman Shri Parab further stated in the application that all these workmen wanted to resign from the said Kamgar Sena. The workmen, therefore produced copy of the application, filed before the Tribunal on 7-7-1988 under which the workmen resigned the membership of the Kamgar Sena. The workmen further asked the said Kamgar Sena not to enter into any settlement with the said management on their behalf, and that they would not be bound by any such settlement, if any.

5. Surprisingly enough on 26-8-1988 the above said workman Shri S. V. Parab filed an application before this Tribunal stating that the said settlement is now acceptable to him and also to all other workmen. All the workmen also filed an application dated 12-10-1988 stating that the said settlement is now acceptable to them. Paras 2, 3 and 4 of this application dated 12-10-1988 are material, which read as follows :—

"2. We the following undersigned employees now submit that after the last date of hearing we again approached the management who once again explained to us the terms of the settlement signed by the Secretary of Bharatiya Kamgar Sena and after understanding the same we feel that under the circumstances the monetary compensation offered to us by virtue of the said settlement is fair and reasonable and therefore we are withdrawing our aforesaid letter dated 3-3-1988.

3. We the undersigned employees therefore request the Hon. Court to accept the said settlement dated 10th day of November, 1987 and request the Hon. Court to that effect and accordingly the award be passed in terms of the said settlement and the reference be disposed of.

4. We the undersigned employees also declare that as a result of our mutual discussions with the management after the last date of hearing, management by way of goodwill have agreed to give 10 to 15 per cent of the amount mentioned in the terms of settlement, which in terms of the amount comes to Rs. 145 to each of the workmen involved in the reference and the said amount in any case will not exceed in all Rs. 10,000 i.e. to say, the sum of Rs. 10,000 will be distributed equally amongst the workmen involved in the reference as an ex-gratia payment by the Management and the ex-gratia amount as well as the amount mentioned in the settlement will be paid to each of the workmen on Bharatiya Kamgar Sena certifying that the claimant is the workman involved in the reference."

6. The above said application dated 26-8-1988 which has been filed before this Tribunal on 12-10-1988 has been signed by Shri V. N. Salvi, who was the Secretary of the Bharatiya Kamgar Sena, and also by the Director of the above said company by name Shri T. E. M. Rosario. These representatives have filed their respective claim statement and the

written statement on behalf of the concerned parties in this proceeding. Therefore, the original settlement dated 10th November, 1987, as well as the present application filed on 12-10-1988 are binding upon all the workmen in question and also on the said company. Therefore the above said company is directed to pay the amounts mentioned in the Memorandum of settlement dated 10-11-1987 to the respective workmen and also to pay the necessary ex-gratia amount to them as referred to in para 4 of the application dated 26-8-1988 filed on 12-10-1988. As such, reference in question is disposed of in terms of Memorandum of Settlement dated 10-11-1987 and the application dated 26-8-1988.

Award accordingly.

P. D. APSHANKAR, Presiding Officer
[No. L-31011/5/85-D.IV A/III.B]

ANNEXURE 'X'

1. Mr. Ajit Vineyak Powale
2. Mr. Mohindra K. Phala
3. Mr. R. Paul Raj
4. Mr. Ravindranathan Nair
5. Mr. M. Rama Subramaniam
6. Mr. K. P. Vijayan
7. Mr. S. Subramaniam
8. Mr. Noor Mohammed Dholakya
9. Mr. K. V. Sagar
10. Mr. Devrurkar R. J.
11. Mr. Nandan P.
12. Shri Surendran Pillai G.
13. Shri Sreekumar V. R.
14. Shri Vasanth S. Shetty
15. Shri Sudhakar Shetty
16. Shri Egbert Augustine
17. Shri K. K. Chackoo
18. Shri Suresh G. Poojari
19. Shri S. V. Khadilkar
20. Shri R. Ravindran and
21. Shri Iqbal A. Sayyed

ANNEXURE 'Y'

1. Mr. Sukumaran
2. Mr. Gopalakrishnan Nair
3. Mr. Suresh Kumar P. R.
4. Mr. Joy Verghese
5. Mr. Surendra V. Parab
6. Mr. Gajra Anil M.
7. Mr. Subash N. Bhatt
8. Mr. Bhaskar Puthran
9. Mr. S. Satish Sheety
10. Mr. Jaganathan Shetty (Bhandari)
11. Mr. Gopala Krishnan B.
12. Mr. Santash V. Karnik
13. Mr. Abdul Azad M. K.
14. Mr. Sunil V. Karnik
15. Mr. Kambhli Prabhakar G.
16. Mr. Milind V. Karnik
17. Mr. Narendran Prasad N.
18. Mr. Anil S. Shetty
19. Mr. K. F. Verghese
20. Mr. P. K. Lakshmanan
21. Mr. Suresh P. Dalvi
22. Mr. Pradeepa Alwa
23. Mr. Chandrasa Sheety.
24. Mr. Joseph Thomas
25. Mr. Hemant S. Salve
26. Mr. Ramchandra S. Narbekar

27. Mr. Rajan A. Parab
28. Mr. Shivram K. Poojari
29. Mr. Padmakar Shetty
30. Mr. J. K. Abraham
31. Mr. Yuvaraja Acharya
32. Mr. Sridhar N. Sheety
33. Mr. R. Musali Dhara Kurup
34. Mr. Ganesh Shankar Surve
35. Mr. A. K. Dayananda Shetty
36. Mr. Dattaram B. Dayalkar
37. Mr. Simon T. S.
38. Mr. Selwyn A. D'Souza
39. Mr. Balakrishnan S. Shetty
40. Mr. Radhakrishnan Nair V.
41. Mr. Sudarshan Kalla T.
42. Mr. Vijay Kumar F. G.
43. Mr. Patel Ajjak S.
44. Mr. Krishna S. S. Sambari
45. Mr. N. Karat Vasant B.
46. Mr. Angolo Alphonso
47. Mr. Dinkar Sitram Shetye
48. Mr. James Anthony D'Souza.

नई दिल्ली, 6 दिसम्बर, 1938

का.प्र. 3662—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नैसर्गिक राजस्थान स्टेट माइन्स एण्ड मिनेरल्स लिमिटेड उदयपुर के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण उदयपुर के पंचवट की प्रकाशित करती है, जो केन्द्रीय सरकार की 25-11-88 को प्राप्त हुआ था।

New Delhi, the 6th December, 1988

S.O. 3662.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Mines and Minerals Ltd., Udaipur and their workmen, which was received by the Central Government on the 25th November, 1988.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 39/87

रेफरेन्स :

केन्द्र सरकार, भ्रम मंत्रालय, नई दिल्ली की अधिसूचना सं. एल. 29012/3/87-डी.-3 (डी) दिनांक 14-7-87 श्री बाबूसास शर्मा पुत्र श्री एच. एल. शर्मा 74 गायत्री मार्ग, उदयपुर।

..... प्राचीन पक्ष बनाम,

महाप्रबन्धक, राजस्थान स्टेट माइन्स एण्ड मिनेरल्स लि., 4 मोरा मार्ग, उदयपुर (राजस्थान)

..... नियोजक पक्ष

उपस्थिति

माननीय श्री प्रताप सिंह शर्मा, एच.जे.एस.

अधिक पक्ष की ओर से :

नियोजक पक्ष की ओर से :

श्री बाबूसास शर्मा स्वयं ...

1. श्री बीरेन्द्र प्रसाद धर्मवास
2. श्री पी.एल. माथुर, धर्मवास इलाहाबाद

दिनांक

06-6-88

प्रचार

ईस्ट प्राक्सिडर, भ्रम मंजालय, भारत सरकार, नई दिल्ली से निम्न-लिखित विवाद अपनी अधिसूचना संख्या एस-29012/3/87-डी-3(बी) दिनांक 14-7-87 द्वारा जारी अधिनियम इस न्यायाधिकरण को प्रेषित किया है :

"Whether the action of the management of M/s. R.S.M.M. Ltd., Udaipur in dismissing Shri B.L. Sharma, Fitter 'C' of their Jhaurkotra Mines is justified and legal? If not, to what relief the concerned worker entitled?"

2. बाव प्रान्ति निर्वहन, इस विवाद को इस न्यायाधिकरण में पंजीकृत किया गया व उभय पक्षकारण को मोटिस ज़रिए पंजीकृत डाक भेजे गए। श्रमिक बाबूलाल शर्मा पुत्र श्री एच.एस. शर्मा, जिसे तत्पश्चात् श्रमिक लिखा जाएगा, ने अपना स्टेटमेंट डाक ब्लेम दिनांक 27-10-87 को इस प्रकार प्रस्तुत किया कि उसकी नियुक्ति दिनांक 31-8-80 को हैल्पर कैटेगरी-2 के पद पर प्रार्थी प्रबन्धक द्वारा की गई थी तथा कार्यक्षमता एवं योग्यता के आधार पर 1-10-84 को सीनियर हैल्पर कैटेगरी-3 के पद पर प्रार्थी प्रबन्धक द्वारा पदोन्नत कर दिया गया तथा 9-8-85 को प्रार्थी प्रबन्धक द्वारा फिटर "सी" के पद पर पदोन्नत किया गया। प्रार्थी को तत्पश्चात् नियोजक लिखा जाएगा। मामले व्यक्त किया कि श्रमिक की सेवाएं दिनांक 7-2-86 को तत्काल प्रभाव से निराधार आरोप लगाते हुए समाप्त कर दी गईं। जबकि श्रमिक प्रतिवर्ष 240 दिन से अधिक निरंतर कार्य करते वाला औद्योगिक श्रमिक हो गया था। उसकी सेवाएं समाप्त करते समय कोई वरिष्ठता सूची नहीं बनाई गई, न ही छंटनी का मुआवजा दिया गया। उसके विरुद्ध यह गलत आरोप लगाया गया कि वह विनय प्रताप सिंह, गुलाम रसूल, कासूलाल, रतनलाल यादव, हमसलाह हो कर उप प्रबन्धक कामिक श्री सज्जन सिंह शकतावत के कमरे में अपराधिक आशय से घुस कर उसके साथ सात, बूतों और मुक्तों से मार पीट की व श्री शकतावत को गम्भीर रूप से घायल कर दिया और सेवा समाप्ति आदेश में प्रार्थी को विरुद्ध इस गम्भीर दुराचरण को आरोप सिद्ध मानते हुए उसकी सेवा समाप्त की। आरोप यह भी आरोप लगाया कि सेवा समाप्ति में नियोजक के द्वारा 25 एक. अधिनियम का भी उल्लंघन किया गया। यह प्रार्थना की कि श्रमिक को सैनिक एवं निरन्तर सेवा में लिया जावे व भी लाभ दियाए जावें जो श्रमिक को निरन्तर सेवा में रहते हुए प्राप्त होते हैं।

3. नियोजक पक्ष की ओर से उक्त स्टेटमेंट डाक ब्लेम का प्रतिवाद इन आधार पर किया गया कि प्रार्थी श्रमिक की सेवाएं दिनांक 7-2-86 के द्वारा समाप्त की गई थी परन्तु इसे नकारा कि उसकी सेवाएं असत्य एवं निराधार आरोप लगाते हुए समाप्त की गई हों। इस सम्बन्ध में आगे यह व्यक्त किया कि प्रार्थी व उसके अन्य साथियों ने उप प्रबन्धक कामिक श्री एस.एस. शकतावत पर बिना किसी कारण दिनांक 6-2-86 को उनके कार्यालय में प्रवेश कर हमला किया और उन्हें बिना कारण में बोटें पहुंचाई जिसे वह गम्भीर रूप से घायल हो गए। इस घटना से माहसुस व माहसुस कार्यालय में अव्यवस्था, भय व असुरक्षा तथा आतंक का वातावरण बन गया व श्रमिक की विवश होकर तुरन्त प्रभाव से बर्खास्त करना पड़ा। इस तथ्य को भी नकारा कि प्रार्थी श्रमिक से कनिष्ठ व्यक्ति सभी कार्यरत हैं। आगे यह भी लिखाया कि इस विवाद में 25 एक. औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। आगे यह भी लिखाया कि प्रार्थी श्रमिक की सेवामुक्ति का आदेश नियमानुसार दिया गया है और क्योंकि प्रार्थी उपलब्ध नहीं था इसलिए स्पष्ट आदेशों के अनुसार रजिस्टर्ड डाक से उसके अंतिम ज्ञात पते पर सेवा समाप्ति आदेश भेजा व मोटिस बोटें पर विवश दिया। आगे प्रार्थना की कि प्रार्थी को राहत देने का अधिकारी नहीं है। इसका प्रार्थना पक्ष निरस्त किया जाकर नो इश्यूट प्रवाह पारित किया जावे।

4. प्रार्थी नियोजक की दरखास्त पर दिनांक 28-7-88 को उन्हें कार्य सिद्ध करने की उनकी प्रार्थना पक्ष स्वीकार की गई जबकि न्यायालय में आरोप सिद्ध करने के लिए पत्रावली को इस सम्बन्ध में कार्यवाही के लिए नियत किया हुआ था तो प्रार्थी नियोजक के प्राक्सिडर ईचार्ज श्री पी.एन. मापूर, उप प्रबन्धक कामिक राजस्थान स्टेट माहसुस एण्ड मिनरल्स लि. व नियोजक के वकील श्री बीरेन्द्र प्रसाद चमवाल ने एवं श्रमिक बाबूलाल शर्मा ने इस न्यायाधिकरण में जयपुर में एक प्रार्थना पत्र इस आशय का पेश किया कि प्रार्थी श्रमिक व प्रार्थी नियोजक कंपनी में दिनांक 6-9-88 को समझौता हो गया है और उक्त समझौता के अनुसार प्रार्थी श्रमिक ने कुल रकम उनसे प्राप्त कर ली है। अतः किसी प्रकार का विवाद शेष नहीं रहा है। समझौते को भी रिकार्ड कर लिए जाने की प्रार्थना की। उभय पक्षकारण की द्वारा पेश कि समझौते को रिकार्ड पर लिया गया व प्रार्थी बाबूलाल शर्मा के द्वारा पेश की गई रसीद को भी रिकार्ड पर लिया गया। उनके द्वारा पेश किये गये समझौते को उभय पक्षकारण को पढ़ कर सुनाया और समझाया गया। समझौता स्वेच्छा से बिना किसी डर, भय व लालच या बला के कारण स्वीकार किया और श्री बाबूलाल शर्मा ने यह भी स्वीकार किया कि मूलाधिक समझौता 1,04,700/- रुपये में से 93,644/- रुपये श्रमिक ने प्राप्त कर लिये हैं बाकी टैक्स के काटे गए हैं और कोई विवाद शेष नहीं रहा है।

5. अतः उक्तोक्त सभी तथ्यों को देखते हुए इस विवाद में नो डिस्पूट प्रवाह पारित किया जाता है। प्रवाह को प्रतिनिधि केन्द्रीय सरकार को नियमानुसार वास्तु प्रकाशनार्थ भेजी जाए।

प्रताप सिंह यादव, न्यायाधीश

[नं० एल०-29012/3/87-डी० III (बी०)]

नई दिल्ली, 7 दिसम्बर 1988

का.पा. 3663.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुकरण में, केन्द्रीय सरकार तेल तथा प्राकृतिक गैस प्रायोग, जोधपुर के प्रबन्धक से सम्बद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निर्विवाद औद्योगिक विवाद में औद्योगिक अधि-करण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-11-88 को प्राप्त हुआ था।

New Delhi, the 7th December, 1988

S.O. 3663.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Oil and Natural Gas Commission, Jodhpur and their workmen, which was received by the Central Government of the 25th November, 1988.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर (कैम्प जोधपुर) उपस्थित:- श्री प्रतापसिंह यादव, भार.एच.जे. एस.

सी.आई.टी. नम्बर:- 43 सन् 1987 श्री भूपेन्द्रसिंह नेगी माफत श्री एस. एस. नेगी एम.ई.एस. कालोनी एयरफोर्स, (जोधपुर) (राजस्थान)

एवं

उप महाप्रबन्धक तेल और प्राकृतिक गैस प्रायोग राजस्थान प्रोपेकट 6 हरी-रंजना रातानाडा, जोधपुर (राजस्थान)

रेफरेन्स क्रन्तर्गत धारा 10(1) (बी) सपटित उपधारा 2(ए)

औद्योगिक विवाद अधिनियम, 1947

उपस्थित :

- (1) श्री. पद्मशेखर व्यास अधिकृत प्रतिनिधि प्राची भूपेन्द्रसिंह उप.
- (2) श्री. सीताधर बसुवेंदी अधिकृत प्रतिनिधि अप्राची उप.

एवां

दिनांक 29-10-88

भारत सरकार के श्रम मंत्रालय के बैंक अधिकारी ने यह निर्देशन जरिये आज्ञा संख्या: 21/19/86-कोन-2/डी-3 (डी)/डी-4 (बी) दिनांक 3-7-87 निम्न औद्योगिक विवाद प्रसंगत धारा 10(1) (डी) संपठित उपधारा 2(ए) औद्योगिक विवाद अधिनियम 1947 जिसे तत्पश्चात् अधिनियम लिखा जायेगा इस न्यायाधिकरण को प्रेषित किया है:-

“नया तेल और प्राकृतिक गैस आयोग जोधपुर के प्रबन्धन को श्री बी.एस. नेगी की सेवाओं को 27-4-85 से समाप्त करने का कार्यवाही पेश और न्यायोचित है, यदि नहीं, तो संबंधित कर्मकार किस अनुलोच का हकदार है?”

2. बाद प्राप्त निर्देशन इस न्यायाधिकरण में विवाद को पंजीकृत किया गया तत्पश्चात् समय-पक्षकारण को नोटिस जरिये पंजीकृत बाक जे गये।

3. श्री भूपेन्द्र सिंह नेगी ने दिनांक 22-8-87 को अपना स्टेटमेंट ऑफ क्लेम निम्न प्रकार से प्रस्तुत किया :-

4. यह है कि प्राची भूपेन्द्रसिंह तेल एवं प्राकृतिक गैस आयोग राजस्थान प्रोजेक्ट (घोटाक) जोधपुर में सर्वप्रथम स्टोर सैजेशन में दिनांक 22-2-81 को कार्य पर लगाया गया। आगे व्यक्त किया कि प्राची ने 240 दिन नौकरी कर चुकने के पश्चात् स्थाई पद पाने का अधिकार प्राप्त कर लिया था, प्रारम्भ में प्राची की नियुक्ति कन्ट्रिजेंट कार्यकर्ता श्रमिक के पद पर हुई थी। प्राची से स्टोर खतासी के रूप में कार्य लिया जाता रहा और वहाँ प्राची दिनांक 8-6-81 तक रहा। तत्पश्चात् प्राची को रसायनिक प्रयोगशाला में रखा गया और उसने यहाँ 1-8-1981 से लगातार 30-9-85 तक कन्ट्रिजेंट लेबर की हैसियत से कार्य किया। यहाँ पर प्राची से कार्य रैगुलर कपरासी का लिया जाता रहा क्योंकि अप्राची विभाग में नियमित कपरासी नियुक्त नहीं था। कार्य लेने के साथ-साथ उसे वेतन का भुगतान भी अप्राची विभाग से किया जाता रहा।

5. आगे यह व्यक्त किया कि प्राची श्रमिक को दिनांक 1-10-85 से जुजानी आदेश से निकाल दिया जब तक प्राची के कार्य के बारे में कोई विवादास्पद नहीं थी। उसने समझौता अधिकारी के यहाँ उसे कार्य से 1-10-85 से निकालने के सम्बन्ध में विवाद उत्पन्न किया परंतु समझौता बार्गी अनकल होने के कारण केन्द्रीय सरकार ने यह निर्देशन इस न्यायाधिकरण को भेजा। आगे यह भी व्यक्त किया कि प्राची को सेवा समाप्त दिनांक 1-10-85 को प्रवेश, बिना क्षेत्राधिकार के की गई। इस प्रकार अप्राची विभाग ने बर्तमान से उसे काम से हटा दिया। यहाँ तक कि उसको सेवा समाप्त करने समय भिन्नता का पालना नहीं की गई, न उसे एक माह का नोटिस सेवा समाप्त करने का दिया न ही नोटिस अवधि का कोई वेतन दिया। प्राची के विरुद्ध कोई जांच आदि भी नहीं की गई और सेवा समाप्त से पूर्व नैसर्गिक म्याद के सिद्धांतों का पालना भी नहीं की गई। इस प्रकार प्राची को और से अप्राची नियोजक द्वारा धारा 25-एफ, औद्योगिक विवाद अधिनियम के उल्लंघन में सेवा समाप्त किये जाने का अभिप्रेषण रखा। अन्त में प्राची की कि प्राची को 1 अक्टूबर 1985 से सेवा समाप्त करने के आदेश को निरस्त किया जाए और उसे सेवा में निरन्तर माना जाये। दिनांक 1-10-85 से पुनः सेवा में लेने तक का वेतन भी दिलाया जाये।

6. अप्राची नियोजक की ओर से उनके अधिकृत प्रतिनिधि श्री सीताधर बसुवेंदी ने उन महाप्रबन्धक तेल और प्राकृतिक गैस आयोग राजस्थान प्रोजेक्ट जोधपुर की ओर से निम्न उत्तर क्लेम पेश किया :-

7. सर्वप्रथम यह एनराज लिया कि प्राची श्रमिक ने उसके स्टेटमेंट आफ क्लेम में इस बात का उल्लेख ही नहीं किया कि उसकी सेवाएं दिनांक 27-4-85 को समाप्त की गईं जब कि 27-4-85 को उसकी सेवा समाप्त किये जाने का अभिप्रेषण उसने अपने क्लेम में ही नहीं रखा तो प्राची के द्वारा कोई औद्योगिक विवाद उत्पन्न ही नहीं होता और इस कारण से वह इस प्राधिकरण से कोई राहत प्राप्त करने का अधिकारी नहीं है। इस कारण से अप्राची की ओर से यह एनराज लिया गया कि मौजूदा रेफरेंस कानून की निगाह में बेबन्धन ला है और इस प्राधिकरण को इस प्रकार का औद्योगिक विवाद उप करने का क्षेत्राधिकार ही प्राप्त नहीं है न ही कोई अनुलोच प्राची की यह न्यायाधिकरण विवादास्पद है। यह स्वीकार किया कि प्राची ने प्रथम चरण में जो कोन्ट्रिजेंट लेबर के रूप में काम करना व्यक्त किया है वह सही है। शेष तथ्यों को इस्तेमाल किया। आगे यह भी व्यक्त किया कि प्राची ने 1-8-83 से पानी पिलाने की व्यवस्था करने के सम्बन्ध में कोन्ट्रिजेंट लेबर का कार्य प्रारम्भ किया था और उनका कोन्ट्रिजेंट या अनुबन्ध दिनांक 30-9-85 को समाप्त हो गया इसलिए दिनांक 30-9-85 के पश्चात् प्राची की सेवाएं स्वतः ही समाप्त हो गई। प्राची को काम पर कोन्ट्रिजेंट फोर सर्विस पर रखा गया था और उसी के अनुसार उसे पारिश्रमिक देय था। मगर प्राची और अप्राची के बीच नियोजित एवं नियोजक का सम्बन्ध नहीं था इसलिए प्राची औद्योगिक विवाद अधिनियम 1947 के तहत एक औद्योगिक कर्मकार की परिभाषा में नहीं आता है इसलिए इस प्रकार का रेफरेंस अवैधानिक है। कोन्ट्रिजेंट लेबर की हैसियत से काम करने से प्राची एक स्वतन्त्र व्यक्ति था और उसके द्वारा 240 दिन से अधिक कार्य बतौर औद्योगिक कर्मकार के करने का प्रश्न पैदा नहीं होता। प्राची कोई अनुलोच पाने का अधिकारी नहीं है, उसके क्लेम आफ स्टेटमेंट को निरस्त किये जाने की प्रार्थना की।

8. प्राची की ओर से प्राची भूपेन्द्र सिंह ने स्वयं का शपथ-पत्र पेश किया जिसे न्यायाधिकरण द्वारा स्वीकृत किया गया। योग्य अधिकृत प्रतिनिधि अप्राची ने प्राची से जिरह की। इसके अतिरिक्त प्राची श्रमिक ने उसके क्लेम की सम्बन्धों में श्री किशन सिंह पुत्र श्री सुख सिंह का शपथ-पत्र पेश किया जिसे भी न्यायाधिकरण द्वारा स्वीकृत कर उससे रतिपरीक्षण अप्राची के अधिकृत प्रतिनिधि ने किया। प्राची की ओर से साक्ष्य समाप्त की गई। अप्राची नियोजक की ओर से श्री मांगीलाल पुत्र श्री बानूदाम ने शपथ-पत्र पेश किया जिसे न्यायाधिकरण द्वारा स्वीकृत किया गया व उससे योग्य अधिकृत प्रतिनिधि प्राची ने जिरह की और अप्राची को साक्ष्य समाप्त हुई।

मैंने बहुत सीमा अधिकृत प्रतिनिधि गण-उप-पक्षकारण सुनी है। पत्रावली का ध्यानपूर्वक अवलोकन किया है।

10. इस न्यायाधिकरण के समक्ष विचारणीय प्रश्न यह है कि क्या प्राकृतिक गैस आयोग जोधपुर के प्रबन्धक ने प्राची को बी.एस. नेगी की सेवाएं दिनांक 27-4-85 को समाप्त करने की कार्यवाही अवैध एवं अनुचित तौर पर की। उपरोक्त प्रश्न को निर्णित करने के लिए हमें प्रत्यक्ष-पक्षकारण की साक्ष्य पर गौर करना है। निर्देशन में प्राची बी.एस. नेगी को सेवा समाप्त 27-4-85 को अवैध रूप से किये जाने का विचारण विन्दु है। मगर खेद को बात है कि प्राची की ओर से दिनांक 27-4-85 को उसकी सेवा समाप्त करने का तथ्य अपने उसके स्टेटमेंट आफ क्लेम में अंकित ही नहीं किया है। अपने स्टेटमेंट आफ क्लेम में उसकी सेवा समाप्त करने की तिथि 1-10-85 तहरीर की है जो रेफरेंस में लिखी गई सेवा समाप्त की तारीख से भिन्न है, न ही प्राची भूपेन्द्रसिंह ने उसकी सेवा समाप्त 27-4-85 से किया जाना उसके शपथ पत्र में ही लिखा है। उसने उसके शपथ पत्र में यह तथ्य अवश्य लिखा है कि उसे तेल एवं प्राकृतिक गैस आयोग

राजस्थान प्रोडक्ट बोर्ड जोधपुर ने सर्वप्रथम स्टोर लेक्शन में दिनांक 22-10-81 को कार्य पर लगाया, उसकी यह नियुक्ति स्टाई रिबल पद के विरुद्ध की गई थी 240 दिन की नौकरी कर चुकने पर वह स्टाई पद पाने का अधिकारी हो गया उसने दिनांक 8-8-81 तक लगातार रसायनिक प्रयोगशाला में उसे रखा गया और तत्पश्चात् 1-8-81 से लगातार 30-9-85 तक वह कार्यरत रहा और उसने अपराधी के रूप में कार्य लिया जाता रहा। प्राप्ति के स्वयं के प्रतिपरीक्षण में भी यही तथ्य जाहिर किया कि उसने 22-2-81 से लगातार 8-8-81 तक स्टोर लेक्शन में कार्य किया फिर 10-8-81 से लेकर 15-6-81 तक उसने प्रयोगशाला में काम किया। तत्पश्चात् 1-8-81 से लगातार 30-9-85 तक उसने राजस्थान परियोजना विभाग में कार्य किया। मारीच 27-4-85 को वह कार्य कर रहा था अप्रैल, मई-जून को उसे तन्त्राह मिल गई थी। इस प्रकार प्राप्ति ने उसके प्रतिपरीक्षण में 27-4-85 को स्वयं नियोजन में होना स्विकृत किया और उसके पश्चात् भी वह स्वीकार किया कि उसे अप्रैल, मई व जून आदि महीनों को तन्त्राह मिल गई है। इस प्रकार प्राप्ति अधिक के स्वयं के प्रतिपरीक्षण में भी यह जाहिर नहीं होता कि दिनांक 27-4-85 को प्राप्ति की सेवा समाप्त की गई। ऐसी सूत्र में प्राप्ति की ओर से यह तथ्य न तो अभिवचन में लिखा गया कि उसकी सेवा दिनांक 27-4-85 को अवधि रूप से खत्म की गई न ही इस प्रकार का तथ्य उसने अपने शपथ पर ग्यान में व्यक्त किया है इसलिए प्राप्ति स्पष्टसिद्ध यह प्रमाणित करने में असमर्थ रहा कि दिनांक 27-4-85 को उसकी सेवाएं उन महाप्रबन्धक तेल और प्राकृतिक गैस आयोग राजस्थान द्वारा अनुचित एवं अवैध तरीके से समाप्त की गई। इस सम्बन्ध में यहाँ यह लिखना उपयुक्त होगा कि धारा 10(1) के प्रावधान में निर्देशन सरकार द्वारा ही कार्यवाही के लिए सेवा जाता है मगर धारा 10(4) औद्योगिक विवाद अधिनियम की यह से यह स्पष्ट है कि औद्योगिक विवाद न्यायाधिकरण एक परिचय की क्रियेण है इसलिए न्यायाधिकरण की अधिकारिता अधिनियम के अनुसार ही एक परिधि में है इसलिए इस न्यायाधिकरण के द्वारा तय किया जाने वाला विवाद उस कानून के प्रावधानों की परिधि में ही सीमित होता है। इस प्रावधान में यह स्पष्ट है कि

It cannot dispense its brand of industrial dispute. The order of reference S. 10(4) lays down that the adjudication by the tribunal is to be confined only to

(1) the points specified in the reference, and

(2) the matters incidental thereto.

In this connection I may reproduce from the Law of Industrial Dispute by Shri Malhotra "page 674" Before the tribunal can acquire jurisdiction in any particular case, the 'industrial dispute' must be referred to it by the appropriate Government and its jurisdiction is limited to the dispute so referred. Section 10(4) permits the tribunal to decide only disputes or points referred to it and matters incidental thereto.

यहाँ यह लिखना उपयुक्त होगा कि न्यायाधिकरण का फंक्शन एक Quasi Judicial होता है। एक व्यवहार न्यायालय जिसका फंक्शन नहीं होता है वही न्यायाधिकरण के अन्तर निहित शक्ति निहित न्यायालय की भांति होती है। किसी भी औद्योगिक विवाद को निहित करने के लिए औद्योगिक न्यायाधिकरण की अधिकारिता उसी हद तक सीमित रहती है जिस हद तक कि उसको विवाद अथवा अधिविधायक निर्देशन appropriate Government द्वारा किया जाता है इसको मद्देनजर रखते हुए यह स्पष्ट है कि इस न्यायाधिकरण के समक्ष प्राप्ति अधिक के सम्बन्ध में उसकी सेवाएं दिनांक 27-4-85

को अवधि एवं अनुचित रूप से समाप्त करने का विवाद निर्देशित किया गया है कि न कि प्राप्ति अधिक की सेवाएं 1-10-85 से समाप्त करने के बारे में जो उसने अपने स्टेटमेंट अफ क्लेम में लिखा है। इस प्रकार जब प्राप्ति अधिक ने 27-4-85 को उसकी सेवाएं अनुचित रूप से समाप्त करने का तो अभिवचन रखा न उसके शपथ पत्र व माध्यम पत्र में प्रमाणित कराया, ऐसी सूत्र में प्राप्ति कोई राहत या अनुमति पाने का अधिकारी नहीं पाया जाता है।

11. अब प्राप्ति यह प्रमाणित करने में असमर्थ रहा है कि कि श्री पी. एम. मेनी की सेवा प्राकृतिक गैस आयोग जोधपुर के प्रबन्धक द्वारा 27-4-85 को अवधि एवं अनुचित रूप से समाप्त की गई ऐसी सूत्र में प्राप्ति कोई राहत पाने का अधिकारी नहीं है। इस पंचाट को प्रति केन्द्रीय सरकार के अर्पण धारा 17(1) अधिनियम बास्ते उचित कार्यवाही भेजी जावे।

12. एकाई प्राप्ति दिनांक 29-10-1988 का जोधपुर फैल में निश्चया जाकर जारी किया गया।

प्रताप सिंह यादव, न्यायाधीश

[का. सं. 21/19/86/का. II/डी III(बी)]

का. प्रा. 3064—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैत्री राजस्थान स्टेट माइन्स एण्ड मिनेरल्स लिमिटेड, जोधपुर के प्रबन्धक से सम्बन्धित नियोजकों और उनके कामगारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण जोधपुर के पक्षों को प्रकाशित करता है जो केन्द्रीय सरकार की 25-11-88 को प्राप्त हुआ था।

S.O. 3664.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Mines & Minerals Limited, Udaipur and their workmen, which was received by the Central Government on the 25-11-88.

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जोधपुर

केस नं. सी. आई. टी. 63/87

रेकॉर्ड

केन्द्र सरकार, अम मंत्रालय नई दिल्ली की अधिसूचना संख्या एन 29012/5/87-डी-III (बी) 25-8-87 श्री गुलाम रसूल अलमज श्री मोहम्मद कानिम, पोरवाड़ा की मस्जिद उधवापुर

प्राप्ति पत्र

बनाम महाप्रबन्धक, राजस्थान स्टेट माइन्स एण्ड मिनेरल्स लि., 4 मोरी मार्ग उधवापुर (राजस्थान)

निर्देशक पक्ष

माननीय श्री प्रताप सिंह यादव, अर एन जे एन

अधिक पक्ष की ओर से: श्री गुलाम रसूल स्वयं
नियोजक की ओर से: 1. श्री बालेन्द्र प्रसाद ध्यवाज
2. श्री पी. एन. माधुर अधिकरण इंचार्ज
दिनांक अर्थात् 06-9-88
अर्थात्

डैमक आदिवासी, अम संवातन भारत सरकार, नई दिल्ली ने मिमन्निनियम विवाद अर्थात् अधिसूचना संख्या एन. 29012/5/87 डा. ---III (बी) दिनांक 25-8-87 द्वारा जारी अधिविधायक न्यायाधिकरण को भेजा गया है :-

"Whether the action of the management of M/s. R.S.M.M. Ltd., Udaipur in dismissing Shri Gulam Rasul, Welder 'A' of their Jhamarkotra Mines is just and legal? If not, to what relief the concerned workman entitled?"

2. बाद प्राप्ति निर्वेशन, इसे विवाद को इस न्यायाधिकरण में पंजीकृत किया गया व उभय पक्षकारान को नोटिस करिए पंजीकृत डाक भेजे गए। अधिक गुलाम रसूल आत्मक श्री मोहम्मद कासिम जिसे तत्पश्चात् अधिक लिखा जाएगा, ने अपना स्टेटमेंट आफ क्लेम दिनांक 12-2-88 को इस प्रकार प्रस्तुत किया कि उनकी नियुक्ति दिनांक 17-10-79 को कैम्बर केटेगरी 4 में अप्रार्थी प्रबन्धक के अधीन हुई थी तथा 1-4-80 को केटेगरी 5 में कैम्बर "ब" के पद पर पदस्थापित कर दिया तथा प्राप्ति अधिक की कार्य बरगाना के आधार पर उसे 1-4-85 से कैम्बर "घ" केटेगरी 8 में पदोन्नति कर दिया गया। अप्रार्थी को तत्पश्चात् नियोजक लिखा जाएगा प्रागे व्यक्त किया कि अधिक की सेवाएं दिनांक 7-2-86 को तत्काल प्रभाव से निराधार आरोप लगाते हुए समाप्त कर दी गई जबकि अधिक प्रतिनियुक्ति 240 दिन में अधिक दिन निरन्तर कार्य करते बाधा औद्योगिक अधिक हो गया था। उनकी सेवाएं समाप्त करते समय कोई बरोखता सूचि नहीं बनाई गई, न ही छट्टी का मुआवजा दिया गया। उसके विरुद्ध यह गवर्न आरोप लगाया गया है कि वह विनय प्रताप सिंह, बाबूदाल शर्मा, कालूराम, रजत लाल यादव हमसलाह होकर उप प्रबन्धक कार्मिक सञ्जन सिंह शक्तावत के कमरे में अपरोधिक प्रार्थन से मूढ़ कर उसके साथ बात चर्चा व मुक्कों से मार पीट ही व श्री शक्तावत को गम्भीर रूप से घायल कर दिया और सेवा समाप्ति आदेश में प्राप्ति के विरुद्ध इस गंभीर घुसावण को आरोप निरुध्मानते हुए उनकी सेवा समाप्त की। आगे यह भी आरोप लगाया कि सेवा समाप्ति में नियोजक के द्वारा 25 एफ अधिनियम का भी उल्लंघन किया गया यह प्रार्थना की कि अधिक को सर्वेनिक एवं निरन्तर सेवा में लिया जाये व सभी नाम विनाएं जावे जो अधिक को निरन्तर सेवा में रखते हुए प्राप्त होते हैं।

3. नियोजक पक्ष की ओर से उक्त स्टेटमेंट आफ क्लेम का प्रतिवाद इस आधार पर पेश किया गया कि प्राप्ति अधिक की सेवाएं दिनांक 7-2-86 के द्वारा समाप्त की गई थी परन्तु उसे नकारा कि उनकी सेवाएं प्रत्येक एवं निराधार आरोप लगाते हुए समाप्त की गई हों। इस संबंध में प्रागे यह व्यक्त किया गया कि प्राप्ति व उनके अन्य साथियों ने उप प्रबन्धक कार्मिक श्री एस.एस. शक्तावत पर बिना किसी कारण दिनांक 6-2-86 को इनके कार्यालय में प्रवेश कर हमसा किया और उन्हें बिना कारण के चोटें पहुंचाई जिसे वह गंभीर रूप से घायल हो गए। इस घटना से माइंस व माइन्स कार्यालय में घणावस्था, भय व असुरक्षा तथा आतंक का वातावरण बन गया व अधिक को विरुद्ध होकर तुरन्त प्रभाव से बर्खास्त करना पड़ा। इस तथ्य को भी नकारा कि प्राप्ति अधिक से कनिष्ठ व्यक्ति सभी कार्यरत हैं। प्रागे यह भी लिखाया कि इस विवाद में 25 एफ औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। प्रागे यह भी लिखाया कि प्राप्ति अधिक की सेवा मुक्ति का आदेश नियमानुसार दिया गया है और क्योंकि प्राप्ति उपलब्ध नहीं था इसलिए स्थाई आदेशों के अनुसार रजिस्टर्ड डाक से उसके अंतिम ज्ञात पते पर सेवा समाप्ति आदेश भेजा व नोटिस बोर्ड पर विपका दिया। प्रागे प्रार्थना की कि प्राप्ति कोई चाहत पाते वा अधिकारी नहीं है। उनका प्रार्थना पक्ष निरन्तर किया जाकर नो डिस्पूट आदेश पारित किया जावे।

4. अप्रार्थी नियोजक की बरखास्त पर दिनांक 28-7-88 को उन्हें बाजें सिद्ध करने की उनकी प्रार्थना पक्ष स्वीकार की गई जबकि न्यायालय में आरोप सिद्ध करने के लिए पक्षकारों को इस संबंध में कार्यवाही के लिए नियत किया हुआ था ता अप्रार्थी नियोजक के चाफिसर इंकार्ज श्री पी. एल. माधुर उप प्रबन्धक कार्मिक, रजिस्ट्रार स्टेट माइन्स एण्ड निरन्तर लि. व नियोजक के बर्कल श्री बीनेन्द्र प्रसाद मधवाल व अधिक गुला

रसूल ने इस न्यायाधिकरण में अवपुर कैम्प माए प्राप्ति व इस बाधों का पेश किया कि प्राप्ति अधिक व अप्रार्थी नियोजक कम्पनी में दिनांक 6-9-88 को समझौता हो गया है और उक्त समझौते के अनुसार प्राप्ति अधिक ने कुल रकम अपने प्राप्त कर ली है। अतः किसी प्रकार का विवाद पेश नहीं रहा है। समझौते को भी रिफाई पर निग्न आने की प्रार्थना की। प्रथम पक्षकारान के द्वारा पेश किये गए समझौते को रिफाई पर लिया गया व प्राप्ति गुलाम रसूल के द्वारा पेश की गई रसीद को भी रिफाई पर लिया गया। उनके द्वारा पेश किये गए समझौते को भी उभय पक्षकारान को पढ़ कर सुनाया और समझाया गया। समझौता स्वेच्छा से, बिना किसी डर, भय, लाज या वबाध के करना स्वीकार किया और श्री गुलाम रसूल पुत्र श्री मोहम्मद कासिम ने यह भी स्वीकार किया कि मुनाबिक समझौता 1,24,140/- रुपये में से 1,06,574/- रुपये अधिक ने प्राप्त कर लिए हैं और बाकी टैक के काट लिए गए हैं, और कोई विवाद पेश नहीं रहा है।

5. अतः उपरोक्त सभी तथ्यों को देखते हुए इस विवाद में नो डिस्पूट आदेश पारित किया जाना है। आदेश की प्रतिलिपि केन्द्रीय सरकार को नियमानुसार प्रकाशनार्थ भेजी जाए।

प्रताप सिंह यादव, न्यायाधीश
[सं. एन-29012/5/87-डी-III(बी)]

का.अ. 3863--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैसन हिन्दुस्तान कॉपर लि., डाकघर खेतड़ी नगर के खेतड़ी कॉपर कम्प्लेक्स के प्रबंधन से सम्बद्ध निबोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रमाणित करती है, जो केन्द्रीय सरकार को 25-11-88 को प्राप्त हुआ था।

S.O. 3665.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Khetri Copper Complex of M/s. Hindustan Copper Limited, P.O. Khetri Nagar and their workmen, which was received by the Central Government on the 25th November, 1988.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 74/84

रेफरेंस: भारत सरकार, अम मन्त्रालय, नई दिल्ली की आशा क्रमांक

एल. 43012(3)/83-डी-III (बी) दिनांक 25-8-84

श्री राम चन्द्र धार्य, मैकेनिक (ए)-ई-64-III-बी, पोस्ट बाक्स खेतड़ी नगर, जिला झुंझुनू (राजस्थान)।

...प्राप्ति पक्ष

वताम

जनरल मैनेजर, खेतड़ी कॉपर कॉम्प्लेक्स डाक पोस्ट हिन्दुस्तान कॉपर लि., पोस्ट चाफिस खेतड़ी नगर, जिला झुंझुनू ...नियोजक पक्ष

उपस्थिति

प्राप्ति पक्ष की ओर से: श्री अणोक परिहार
नियोजक पक्ष की ओर से: श्री मनोज शर्मा
दिनांक अधाई 29-8-88

प्रकाई

भारत सरकार के अम एवं पुनर्वास मन्त्रालय, नई दिल्ली के रेफरेंस क्रमांकरी श्री टी.डी. सी. सोनामनन ने दस्तखत धारा 10(1)(बी) औद्योगिक विवाद अधिनियम 1947, जिसे तत्पश्चात् अधिनियम लिखा जाएगा, निम्न विवाद जर्ण आशा क्रमांक एल-43012(3)/83-डी-III-बी दिनांक 25-8-84 इस न्यायाधिकरण को दाने अधिनियम प्रस्तुत किया है:

"Whether the management of Khetri Copper Complex of M/s. Hindustan Copper Limited, P.O. Khetri Nagar is justified in dismissing Shri Ramchandra Arya, Mechanic 'A' Code 27493 w.e.f. 28-9-1979. If not to what relief is Shri Ramchandra Arya entitled."

2. बाद प्राप्ति उक्त निर्देशन, ये बिबाद न्यायाधिकरण हाजा में पंजीकृत किया गया और पक्षकारों को जरिए पंजीकृत बाक नोटिस जारी किये गए। श्री राम चन्द्र आर्य, जिसे तत्पश्चात् प्राप्ति अमिक निष्ठा आया, ने अपने स्टेटमेंट आफ क्लेम निम्न प्रकार से प्रस्तुत किया :

3. यह कि प्राप्ति अमिक बतौर एक महायक के बिपक्षी संस्थान में दिनांक 17-7-68 को नियुक्त किया गया था और बाद में दिनांक 1-9-75 को उसे मैकेनिक ग्रेड 'ए' के पद पर पदोन्नत किया गया। उसका कोड नम्बर 27-493 था।

4. प्राप्ति की ओर से यह अभिवचन रखा गया कि उसने अपने सेवाकाल में पूर्ण ईमानदारी, मर्यादित और परिश्रम के साथ कार्य किया और काम के खिलाफ उन्हें उससे कोई शिकायत नहीं थी। ताहम प्राप्ति ने यह व्यक्ति किया कि वह खेतड़ी ताम्बा अमिक संघ की एक सक्रिय यूनियन का एक सदस्य था। और दुर्भाग्य से केन्द्रीय औद्योगिक सुरक्षा बल के एक सिपाही श्री राम मूर्ति से एक व्यक्तिगत प्राप्ति की रंजिश थी और सिपाही राम मूर्ति के उकसाने पर प्राप्ति की बोरी के केस में झूठे तौर पर फंसा दिया गया गया। आगे यह व्यक्त किया कि प्राप्ति को 11-6-77 को एक भाजें शीट दी गई जिसका बर्बाद प्राप्ति के पैरा-ग्राइज सभी आरोपों को नकारते हुए दिया। फिर भी बिपक्षी नियोजक की ओर से एक जांच अधिकारी नियुक्त किया गया जो कम्पनी में ला अफिसर के पद पर कार्यरत था।

5. यह कि सभी जांच गलत थी। उसमें आगे यह आरोप लगाया गया कि प्राप्ति अमिक जांच की छांट के अपने हस्ताधी के द्वारा उसका प्रति-निधित्व करने का अवसर दिया नहीं गया। आगे यह भी आरोप लगाया कि गवाहों के बयान उचित ढंग से नहीं लिखे गए। यहां कि प्राप्ति के एत-राजों को भी जब अधिकारी द्वारा नहीं लिखा गया। यह भी आरोप लगाया कि प्रतिरक्षा के गवाहों को पेश नहीं करने दिया गया। सारी जांच नैसर्गिक न्याय के सिद्धांत के उल्लंघन के खिलाफ की गई। आगे यह भी आरोप लगाया कि बूकि बिपक्षी संस्थान प्राप्ति को सेवा से निकालने में खुले हुए थे इसलिए उसे 28-9-77 को सेवा से निकास दिया गया।

6. आगे यह भी अभिवचन रखा कि प्राप्ति के बिबद्ध एक कोजदारी प्रकरण इला बोरी के बारे में लगाया गया था जिसके संबंध में योग्य मुक्ति एवं न्यायिक मजिस्ट्रेट, खेतड़ी ने प्राप्ति का बोरी के आरोप से दिनांक 14-8-79 को तुरी कर दिया था। इस प्रकार प्राप्ति की सेवा समाप्ति के पश्चात् दिनांक 28-9-77 को प्राप्ति ने अधिनियम की धारा 33(ए) के तहत एक प्राप्ति पक्ष केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के समर्थ पेश की थी। उस समय बूकि एक रेफरेंस केस न्याया-धिकरण के समक्ष लम्बित था और बिपक्षी संस्थान ने इस प्राप्ति पक्ष के बारे में प्रारंभिक एतराज उठाया था कि प्राप्ति उक्त रेफरेंस में एक संबंधित कर्मकार नहीं है। मगर, इस न्यायाधिकरण ने बिपक्षी के इस एतराज को निरस्त कर दिया था। मगर इस प्रारंभिक एतराज के संबंध में न्यायाधिकरण के आदेश को नियोजक पक्ष की ओर से सामनीय राजस्थान उच्च न्यायालय में चुनौती दी गई थी। भारतीय उच्च न्यायालय ने बिपक्षी मन्थान की रिट याचिका स्वीकार की कि प्राप्ति न्यायाधिकरण के सम-लम्बित रेफरेंस में एक संबंधित कर्मकार नहीं है और इसी कारण से प्राप्ति की यह शिकायती प्राप्ति पक्ष अस्तित्व धारा 33 अधिनियम काबिल पेश रखन नहीं पाई गई। इस कारण से प्राप्ति ने केन्द्रीय सरकार के अम समझौता अधिकारी के समक्ष समझौते के लिए बिबाद उठाया। आगे यह भी एतराज किया कि एक समझ न्यायालय बोरी के आरोप पर पहले ही प्राप्ति को तुरी कर चुका है। प्राप्ति ने नियोजक को इन संबंध में काफी बिपक्ष था कर चुका है मगर उसकी कोई सुनवाई नहीं हुई। इस कारण

प्राप्ति नियोजक का आदेश देश पूर्ण एवं न्याय प्रस्तुत था। जी बिपक्षी-साईजेशन और अतफर लेबर प्रेडिक्ट की परिभाषा में आता है। इसलिए प्राप्ति को कि प्राप्ति को सेवा मुक्ति दिनांक 28-9-77 से अवैध करार दी जाए व प्राप्ति को पूरे पीछे के बैचन सहित बहाल किया जाए।

7. नियोजक पक्ष की ओर से क्लेम स्टेटमेंट का उत्तर निम्न प्रकार से पेश किया गया।

8. इस तथ्य को नकारा कि श्री राम चन्द्र आर्य का काम संतोष-जनक था और उसके बिबद्ध कोई शिकायत नहीं थी। वास्तव में प्राप्ति का सेवा रिकार्ड पूर्ण में स्वच्छ नहीं था। उसके बिबद्ध बिना अनुमति के काम पर न आना और बिपक्षी कम्पनी की चीजें अनाधिकृत रूप से अपने आधिपत्य में रख लेने के आरोप रहे हैं। इसके संबंध में पूर्ण में प्रत्येक ओर धिये उनकी प्रतियां अनेक्स्चर धार-1 हैं। प्राप्ति का यह अभिवचन भी गलत है कि वह खेतड़ी ताम्बा अमिक संघ का सक्रिय कार्यकर्ता है बल्कि समझौता बाँटा के दौरान उसने यह कहा था कि वह राष्ट्रीय खेतड़ी ताम्बा मजदूर संघ का सक्रिय सदस्य है। जिसके संबंध में अप्राप्ति की ओर से अनेक्स्चर धार-2 पेश किया गया है। इस तथ्य को भी नकारा कि राम मूर्ति और राम चन्द्र के बीच दुश्मनी थी। आगे यह भी व्यक्त किया कि प्राप्ति ने श्री रामचन्द्र आर्य ने घरेलू जांच में बिल्कुल एक नयी कहानी गढ़ कर पेश की और उस कहानी में कोई तथ्य नहीं है। यह प्रतिरक्षा की कहानी नियोजक पक्ष के गवाहों के समक्ष नहीं रखी गई। नियोजक पक्ष ने प्राप्ति के बिबद्ध बोरी के मामले में निष्पक्ष रूप से इन्क्वायरी की है और प्राप्ति ने पूरे रूप से जांच में भाग लिया है। और इस कारण से श्री राम चन्द्र आर्य को सही रूप से सेवा निवृत्त किया गया है। प्राप्ति के द्वारा जांच अधिकारी के बिबद्ध लगाए गए दोष भी प्राधाच्छीन होना कहा। प्राप्ति के बिबद्ध इन्क्वायरी नैसर्गिक न्याय के सिद्धांतों के आधार पर करना जाहिर किया और इन्क्वायरी के रिकार्ड से यह स्पष्ट है कि नियोजक पक्ष की कहानी सत्य थी। श्री राम चन्द्र आर्य की सेवा समाप्ति बोरी का आरोप उसके बिबद्ध प्रमाणित होने के आधार पर की गई है। श्री राम चन्द्र आर्य का बिपक्षी गौर किया गया था और उसे घरेलू जांच के कागजों को देखने की भी अनुमति दी गई थी। आगे घरेलू जांच के संबंध में आरोप कोजदारी मुकदमों की तरह सख्ते से पूरे नहीं साबित करना होता है। यदि सारे बिबाद को घरेलू जांच के रिकार्ड के आधार पर गौर किया जाए तो शक का फायदा पट्टाने का सवाल उत्पन्न नहीं होता। घरेलू जांच और रिकार्ड ही "मेटीरियल फ्रॉम रिकार्ड" है। यदि यह न्यायाधिकरण इस परिणाम पर पहुँचे कि घरेलू जांच उचित एवं फयर नहीं थी तो उन्हें आरोप न्यायाधिकरण के समक्ष प्रमाणित करने का अवसर दिया जाये। आगे यह एतराज दिया कि यह निर्देशन बोरी से न्यायाधिकरण को पेश किया गया है। नियोजक पक्ष मुक्ति बोर्ड के निर्णय से पाबन्द नहीं है। विशेष तौर से ऐसी परिस्थिति में जबकि कार्य को शक का फायदा दिया गया है। इस प्रकार प्राप्ति की गई कि प्राप्ति का क्लेम पूर्ण सहित जाहिर किया जाए।

9. दिनांक 29-3-87 को बोरी पूर्ण न्यायाधीश ने श्री परिहार अधिकृत प्रतिनिधि प्राप्ति व श्री मनोज शर्मा की घरेलू जांच बाबत बहुत मुनकर घरेलू जांच को फोर एवं प्रोपर पाया। तत्पश्चात् मैंने बहुत योग्य अधिकृत प्रतिनिधि प्राप्ति श्री परिहार एवं श्री मनोज शर्मा बर्फील सुनी है और पत्रावली का ध्यान पूर्वक खलोकान किया है। इस न्याया-धिकरण के समक्ष विचारणीय प्रश्न यह है कि आया प्राप्ति श्री राम चन्द्र के बिबद्ध यह आरोप प्रमाणित है कि उसने दिनांक 8-6-77 की राख को लगभग 10.00 बजे अप्राप्ति कम्पनी का गन मेटल का करीब 30 किलो बजरी टुकड़ा जहायानीगी से चुराया और उसे वह इस प्रकार चुराने के बाद आई. बी. एम. गेट के बाहर ले जा रहा था और वहाँ हाँ तो क्या प्राप्ति, इस घराकरण में उसे जो सजा दी गई है, वह किसी प्रकार का अनुपातिक है। उक्त आरोप को सम्बन्ध में श्री बी. पी. गुप्ता जांच अधिकारी, ने दौरान जांच श्री महेश सिंह बाबब एम. डब्ल्यू. 1, श्री राम मूर्ति एम डब्ल्यू. 2, सत्यबीर सिंह एम. डब्ल्यू. 3, राजेश सिंह बीबीएम एम. डब्ल्यू-4 एवं माधयन प्रसाद दूत रिजिस्टर एम. डब्ल्यू. 5 के बयान किये हैं जिनसे प्राप्ति के द्वारा जिरफ की गई

है और प्रार्थी ने उसकी प्रतिरक्षा में श्री शिव प्रसाद का बयान कराया है और स्वयं की भी साक्ष्य दी है। इन सभी गवाहान की साक्ष्य का पुनः विवेचन किया जाना आवश्यक होगा और इस सम्बन्ध में यह भी देखना है कि जांच अधिकारी ने आया इन गवाहान की साक्ष्य का उचित रूप से विवेचन व मूल्यांकन किया है या नहीं। श्री महेन्द्र सिंह यादव, सिक्योरिटी गार्ड सी. आई. एस. एफ., के सी. सी., कोड नम्बर 7202130 ने 9-6-77 की उसकी ड्यूटी आई. बी. एम. गेट पर तीसरी शिफ्ट में होना व्यक्त किया। लगभग 10 बजे रात को उसने श्री राम चन्द्र प्रार्थी को आई. बी. एम. गेट पर रोकना एवं उसे बैक करने पर उसकी सार्किल की कैरियर में एक कम्बल में लिपटा हुआ सामान होना व्यक्त किया। श्री राम चन्द्र से पूछने पर उसने सामान लोहा होता बताया जिसे उसने एडिट नम्बर 3 पर आ रहा होता बताया। गवाह ने श्री राम चन्द्र से पास मांगना कहा जिस पर उसने उस सामान के जे जाने का पास न होना कहा जिस पर गवाह ने उसे वहीं रोक लिया तथा कम्बल को खुलवाया तो उसमें लोहे की धपका पीतल मिला जिस पर उसके पूछने पर यह जाहिर करना कहा कि उसकी बहुत की 16-6-77 को शादी है उसे पैसे की जरूरत है इसलिए यह सामान वह चुरा कर ले जा रहा है। जिसकी रिपोर्ट उसने शिफ्ट इन्चार्ज श्री सत्यवीर सिंह को मौखिक रूप से कर दी। जो उसने खबर राम मूर्ति के द्वारा भिजवाई सत्यवीर सिंह वहां आ गया। तत्पश्चात गवाह ने राम चन्द्र को उनके द्वारा राम मूर्ति के साथ मैन गेट के उपर भेज देना व सामान के साथ भेज देना कहा। एम. डब्ल्यू. 2 की राम मूर्ती ने एम. डब्ल्यू. 1 की साक्ष्य को सम्पुष्ट करते हुए यह इस प्रकार तथ्य लिखा कि 9-6-77 में उसकी ड्यूटी साय 9 बजे से सुबह 5 बजे तक आई. बी. एम. गेट के. सी. सी. पर थी। लगभग रात के दस बजे प्रार्थी राम चन्द्र पीतल का गोल आकार का एक सामान ले जा रहा था जिसे वह पहले नहीं जानता था। पीतल का सामान राम चन्द्र की सार्किल पर कम्बल में लिपटा हुआ था जो सार्किल के कैरियर पर लिपटा हुआ था। राम चन्द्र से उसने पूछा तो उसने बताया कि यह लोहा है जो एडिट नं. 3 पर ले जा रहा है। जिस पर उन्होंने प्रार्थी से पूछा कि उसका गेट पास कहा है तो उसका गेट पास न होना बताया जिस पर राम चन्द्र ने उसे सार्किल से उतार कर कम्बल खोल कर दिखाने की कहा तो राम चन्द्र ने उसे सार्किल से उतार कर दिखाया जिसमें लोहे की बजाए पीतल मिला। जिसे उसने कम्बल में लिपटवा कर सार्किल पर रखवा दिया। फिर वह राम चन्द्र व उसके साथी महेन्द्र सिंह को वहीं छोड़ कर वह मैन गेट पर गया जिसकी सूचना उसने शिफ्ट इन्चार्ज सत्यवीर सिंह को दी जो उसके साथ आई. बी. एम. गेट पर आया। फिर सत्यवीर सिंह और राम चन्द्र को लेकर मैन गेट पर गया। सत्यवीर सिंह एम. डब्ल्यू. 3 ने 9-6-77 को साय 9 बजे से सुबह 5 बजे तक के. सी. सी. के मैन गेट पर उसकी ड्यूटी होना व्यक्त किया 9-6-77 को श्री राम मूर्ती सिक्योरिटी गार्ड का उसके पास मैन गेट पर करीब 10 बजे राखि आया और उसका यह बताना कि राम चन्द्र आये पीतल का कुछ सामान आई. बी. एम. गेट से बाहर ले जा रहा था का रोक देना, जिसके पास सामान का गेट पास न होना और फिर गवाह का राम मूर्ती के साथ आई. बी. एम. गेट पर जाना। गवाह का कहा राम चन्द्र आये की देखना तथा एक सार्किल पर पीछे कम्बल में लिपटा हुआ पीतल का सामान रखा होता, जिसके कम्बल को खुलवा कर देखना और उसमें करीब एक फीट लम्बा तथा गोल पीतल का आकार का सामान होना और फिर उसी सामान को राम चन्द्र से कम्बल में लिपटवा कर राम मूर्ती को साथ लेकर मैन गेट पर आना लिखाया। तत्पश्चात गवाह द्वारा उसके कम्पनी कमान्डर रिसाल सिंह को खबर करमा। स्वयं के द्वारा राम चन्द्र का बयान लेना व तत्पश्चात राम चन्द्र के विकट पाना खेतड़ी में 10-6-77 को सुबह रिपोर्ट करवाना व्यक्त किया है। उन्होंने एक आई. आर. संख्या 45 दिनांक 10-6-77 के अंतर्गत धारा 378 वर्ज करना लिखाया और सामान सार्किल समेत पाना खेतड़ी में सुपुर्द करना व्यक्त किया है। राजेन्द्र सिंह एम. डब्ल्यू. 4 ने स्वयं को 9-6-77 को भी शिफ्ट में शाम के 4 बजे से रात के 12 बजे तक फौजीकेशन बर्कशाप में ड्यूटी पर होना

और वहां बर्कशाप से लगभग 9.15 बजे एडिट बर्कशाप में सुपरबीजम के लिए गया और एक घंटे बाद वह वापस अपने बर्कशाप में आ रहा था। उसके पूछने पर मंत्रीहर सिंह फिटर बी ग्रेड ने उसे बताया कि प्रार्थी राम चन्द्र आये लगभग साढ़े 9 बजे से नहीं है। थोड़ी देर इंतजार करने के पश्चात उस गवाह ने बेब प्रकाश की फोन पर सूचित कर दिया तो श्री बेब प्रकाश ने उससे कहा कि वह राम चन्द्र को उसके यहाँ आउट दिखा कर उसकी स्विच टाईम आफिस में भेज दे जो उसने भेज दी। एम. डब्ल्यू. 5 नारायण प्रसाद टूल रिसीवर ने 9-6-77 को के. सी. सी. में बार बजे साय से रात के बारह बजे तक फौजीकेशन बर्कशाप में उसकी ड्यूटी होना और श्री राम चन्द्र प्रार्थी द्वारा एक मैन मैटल राइ ईशू करवाने को जो उसने यह कह कर कराई थी कि वह बुध बनवाने को चाहिए, जिस पर उसने वह गन मैटल ईशू कर देना जो लगभग एक फिट लम्बी व 5-6 फिट चौड़ी गोल आकार की होना व्यक्त किया जो उसे राम चन्द्र ने नहीं लौटाई। कम्प्यूसेबल आर्टिकल होने पर उसकी एग्री न होना व्यक्त किया और यह भी बताया कि जैसे ही मैकेनिक मांगते हैं, उन्हें दे दी जाती है। उसके मध्ये मुकाबिल प्रार्थी की ओर से श्री शिव प्रसाद भी. डब्ल्यू. 1 को पेश किया गया जिसने व्यक्त किया कि वह लगभग 3 साल से के. सी. सी. में मजदूर की हैसियत से काम कर रहा है। 9-6-77 को उसकी ड्यूटी रात सात बजे से सुबह साढ़े 10-6-77 को 9 बजे तक थी। वह लगभग 9.45 बजे आई. बी. एम. गेट पर पहुंचा उस समय वह अकेला ही गेट पर गया था। वहां सी. आई. एस. एफ. का एक घावमी था। दूसरा सी. आई. एस. एफ. का घावमी एक लम्बा टुकड़ा लेकर वहां आया। वह उस टुकड़े को गेट के पास लाकर उससे बोला कि वह चला जाए तो वह वहां से चला गया। आगे व्यक्त किया कि साढ़े 11 बजे रात को राम चन्द्र केन्टीन में उसके साथ चाय पी रहा था। वहां एक सी. आई. एस. एफ. वाला भी आया था। वह राम चन्द्र को बुलाने आया था। बी. डब्ल्यू. 2 राम चन्द्र ने अपने बयान में व्यक्त किया कि 9-6-77 को उनकी ड्यूटी शाम 4 बजे से राति 12 बजे तक थी। आगे लिखाया कि 9 घंटी के सुबह करीब 11 बजे वह बस स्टैंड पर घर से खेतड़ी जाने के लिए आया। वहां पर काफी भीड़ थी। जहां सी. आई. एस. एफ. का राम मूर्ती खड़ा था। जहां राजनीति की बातें हो रही थीं तो आपस में उसकी सी. आई. एस. एफ. वालों से झगड़ हो गई तथा आपस में गाली बलीच हो गई और उन्हें हाथापाई के दौरान अलग-अलग कर दिया गया। अलग करने के बाद राम मूर्ती ने उससे कहा कि वह उसे देख लेगा। दूसरे घावमियों ने उसे झगड़ा करने से रोका। उसके पीछे एक घावमी खड़ा था। वह मूल चन्द्र ब्लास्टर था। थोड़ी देर बाद बस आ गई और वह चला गया। 9-6-77 को जब कि वह ड्यूटी पर था तो उसने उसके सुपरवाइजर से खाना खाने की छुट्टी करीब साढ़े सात बजे मांगी। खाना खाने चला गया उसके बाद 11.15 बजे वह केन्टीन की तरफ आ गया। फिर चाय पीने चन्बर गया। थोड़ी देर बाद सी. आई. एस. एफ. का एक घावमी आ गया जिसने कहा कि उसकी एक घावमी बुला रहा है। वह केन्टीन से बाहर आ गया और उसे वह घावमी आई. बी. एम. गेट पर लिवा कर ले गया तथा उन्होंने उसे बेर लिया। वहां 3 या 4 घावमी और थे तथा उस पर कुछ आरोप लगा दिया।

10. योग्य अधिकृत प्रतिनिधि प्रार्थी कर्मकार ने यहस की कि मीनेज-मेन्ट को कोई लिखित रिपोर्ट तथा कथित गन मैटल के टुकड़े के चुराए जाने बाबत नहीं की गई। केवल एक प्रथम सूचना पुलिस थाना में वर्ज कराई गई जो कि अगले दिन 12 बजे काफी देरी से। इसके प्रतिरक्त उस गन मैटल के टुकड़े की ईशू करने बाबत कोई इन्फ्राज नहीं किया गया। इससे प्रार्थी के इस कथन की ताईद होती है कि उनके बिश्वास से गलत मुकदमा कायम किया गया है। योग्य अधिकृत प्रतिनिधि प्रार्थी ने यह भी बहस की कि प्रार्थी घटना के समय फौजीकेशन बर्कशाप में काम करता था। वहां पर भी एक गेट है और आई. बी. एम. गेट, जहां पर कि प्रार्थी की गन मैटल के टुकड़े तहियत पकड़ा जाना कहा गया है, वह उस के बाब में है। यदि प्रार्थी के पास यह तीस किन्ही

बजती गन बैटन का दुकाना कीबेकेशन बकौपाप से लाया जाता तो उसकी कीबेकेशन बकौपाप के पास के गेट पर रोका जाता स्वाभाविक या मगर इस प्रकार की कोई साक्ष्य नहीं आई है जिससे भी इस बात की सम्पुष्टि होती है कि प्राप्ती को गलत तौर से आलिप्त किया गया है। योग्य अधिभुक्त प्रतिनिधि प्राप्ती ने बहुत की कि प्राप्ती को योग्य मूक्तिक एवं न्यायाधिक मजिस्ट्रेट खेती ने अंतर्गत धारा 279 भारतीय दण्ड संहिता से बरी किया है। प्राप्ती (अभियुक्त) के विरुद्ध जुर्म साबित करने का दायित्व परिवार पक्ष पर था और जब परिवार पक्ष जुर्म को सन्देश से परे प्रमाणित करने में सफल नहीं हुआ है तो ही अभियुक्त जुर्म से बरी होने योग्य पाया जाता है। योग्य अधिभुक्तता ने यह भी बहुत की कि दण्ड प्रक्रिया संहिता में ओनरेवरल एक्सीटन जैसा कोई कन्सेप्शन नहीं है और इसके लिए उन्होंने ए. आई. बार 1060 मद्रास 325 (बी. 47) (सी. 108) पर सम्पादित किया।

11. इस प्रकार साक्ष्य को निर्दिष्ट करते हुए योग्य अधिभुक्त प्रतिनिधि प्राप्ती ने बहुत की कि प्राप्ती के विरुद्ध प्रथम तो गन मेटल के चुरा लाने का आरोप प्रमाणित नहीं है और यदि यह न्यायाधिकरण प्राप्ती के विरुद्ध चार्ज प्रमाणित होता भी माने तो भी न्यायाधिकरण अंतर्गत धारा 11 (ए) सजा को बिन्दु पर गीर कर सकती है इसलिए प्राप्ती को बेलन सहित बहाल किए जाने की प्रार्थना की।

12 योग्य अधिभुक्तता प्राप्ती नियोजक पक्ष ने बहुत की कि योग्य मूक्तिक एवं न्यायाधिक मजिस्ट्रेट खेती का धारण 14-6-70 का है जिसमें सिर्फ उनके समक्ष पेश हुई साक्ष्य के आधार पर उन्होंने गन का फायदा प्राप्ती को दे दिया है। योग्य अधिभुक्तता प्राप्ती ने सुप्रीम कोर्ट नेबर जजमेंट 1973 (10) पर अवलम्ब करते हुए शब्द "मेटिरियल जोन रिफार्ड" जो धारा 11 (ए) अधिनियम के परलुक्त में है, उसकी इस प्रकार व्याख्या करते हुए केवल धरेलू जांच के संदर्भ में आए मबाव को ही मेटिरियल जोन रिफार्ड नहीं कहेंगे। उसने विपरीत धारो यह निश्चित किया कि परलुक्त में आए शब्द "मेटिरियल जोन रिफार्ड" को ट्रिब्यूनल के समक्ष रखे गए सभी मबाव को माना जाएगा जिसमें व सभी साक्ष्य शामिल होंगी जो कि नियोजक पक्ष द्वारा इन्वायरी में दी गई हैं और इसके प्रतिरोधक वह भी साक्ष्य शामिल होंगी जो इन्वायरी के प्रतिरिक्त न्यायाधिकरण में पेश की गई हैं। जिसमें वह साक्ष्य भी शामिल होंगी जो प्रथम बार नियोजक व बर्कर द्वारा ट्रिब्यूनल के समक्ष पेश की गई हैं। इस प्रकार योग्य अधिभुक्तता धरेलू जांच में पेश की गई साक्ष्य को "मेटिरियल जोन रिफार्ड" होना कहा। इस संबंध में धारो बहुत की कि प्राप्ती कर्मकार ने उसकी प्रतिरक्षा में भिन्न भिन्न स्टेज लिए हैं। इस संबंध में यह बहुत की कि उसने अपने स्टेटमेंट आफ बसेम में अपने धार को खेती तात्मा धमिक रांष का सक्रिय मैम्बर होना कहा, जबकि समझौता बार्ता में उसने अपने धारको राष्ट्रीय खेती तात्मा मजदूर संघ का सदस्य होना कहा। इस प्रकार किस यूनियन का वह सदस्य था वह भी उसने प्रमाणित नहीं कराया है। इसके प्रतिरिक्त योग्य अधिभुक्तता नियोजक ने बहुत की कि प्राप्ती स्वयं की साक्ष्य उसकी प्रतिरक्षा की थी कि उसका राम मूर्ती से झगडा हो गया था और व वैमनस्यता के कारण उसे गलत फंसाया गया, गलत प्रतीत होता है कि क्योंकि इस प्रकार की डिफेंस थी प्राप्ती राम चन्द्र द्वारा चार्ज गीट के लिखित जबाब में नहीं की गई, ना ही इस बारे में प्राप्ती ने राम मूर्ती से प्रति परीक्षण में एकठा एक भी कोई प्रश्न नहीं किया। बल्कि प्राप्ती ने उसके प्रति परीक्षण में यह जाहिर किया कि वह राखि के करीब साढ़े ग्याख बजे केटीन में चाम पीने आया था जो प्राप्ती का बयान स्वतः ही गलत प्रतीत होता है। यह स्वीकार योग्य तथ्य नहीं है कि कोई व्यक्ति राखि के साढ़े ग्याख बजे उसके घर से इतनी दूर केटीन में प्राप्ती राख के समय चाम पीने के लिए बल कर आया। योग्य अधिभुक्तता प्राप्ती ने यह भी बहुत की कि प्राप्ती ने उसके प्रति परीक्षण में यह भी माना कि उसने सी.आई.एस.एफ. के व्यक्तियों के समक्ष बोरी करता कबूल किया है तब और कोई खसुत की आवश्यकता नहीं रहती है। योग्य अधिभुक्तता नियोजक पक्ष ने यह भी बहुत की कि प्राप्ती के गवाम् धिन्न प्रसाव ही दण्ड्य. 1 का बयान काबिल विश्वास नहीं है। यह यहाँ तक नहीं कहा सका कि सी.आई.एस.एफ. के तीन व्यक्ति यहाँ

शिव प्रसाव की पटना के समय उपस्थिति संदेहास्पद प्रतीत होती है। योग्य अधिभुक्तता नियोजक पक्ष ने बहुत की कि प्राप्ती के धनवर नियोजक पक्ष का विश्वास न होना जाहिर हुआ है और इस संबंध में इन्वायरी में नियोजक पक्ष की ओर से ऐसे दस्तावेज पेश किये हैं जिससे कि प्राप्ती का पूर्व में विपक्षी कम्पनी के अधिपत्य की वस्तुओं का भिन्न एप्रोप्रिएट करना और उसका काम संतोष जनक न होना पाया जाता है और इसके कारण से नियोजक पक्ष का कन्सीडेंस उसमें न रहना पाया जाता है। नियोजक कान्सीडेंस प्राप्ती के द्वारा फोरफीट कर देना इस न्यायाधिकरण के समक्ष भी उन्होंने रखा है। ऐसी सूरत में प्राप्ती को पुनः सेवा में बहाल किया जाना किसी प्रकार न्यायोचित नहीं होगा। इस संबंध में योग्य अधिभुक्तता प्राप्ती नियोजक ने ए.आई.आर. 1975 सुप्रीम कोर्ट 1725 पर अवलम्ब किया। योग्य अधिभुक्तता नियोजक पक्ष ने 1984 लेब, आई.सी. 179 पर भरोसा करते हुए बहुत की कि जब कि कर्मकार फीमदारी कुर्म में बरी हो जाता है तो भी धरेलू जांच रखी जा सकती है। इस संबंध में यह बहुत की कि सामान्यतः जब कोई अभियुक्त पूरे तौर से उसकी लगाए गए आरोप से बरी हो जाता है तो उसके विरुद्ध धरेलू जांच जारी रखना धावश्यक नहीं है। महज अभियुक्त बरी कर दिया जाता है तो सहकमाना जांच जारी रखने का एप्रोप्रिएट को अधिकार है और केवल अभियुक्त के बरी हो जाने से डिपार्टमेंट को खत्म नहीं किया जा सकता। योग्य अधिभुक्तता नियोजक पक्ष ने एल.एल.जे. बोल्डम T पृष्ठ 107 कमल किशोर लक्ष्मण एंड मैनेजमेंट आफ पैन अमेरिकन बल्ड एयरवेज एंड अदर्स इस संबंध में यह निश्चित किया गया है कि जहाँ भरोसा न रहने के कारण सेवा समाप्त की गई हो, वह एक स्टिग्मा की परिभाषा में आता है और यह छुट्टी की तारीख में नहीं साया। यह भी निश्चित किया गया है कि न्यायाधिकरण के समक्ष कार्यवाही के दौरान सेवा समाप्त को जस्टीफाई कर सकते हैं। यदि किसी व्यक्ति की सेवा एक स्टिग्मा के तौर पर समाप्त की गई हो तो उसमें इस प्रकार का कोई अंतर नहीं होगा कि वह राज्य कर्मचारी था या अन्य कर्मकार।

13. उपरोक्त दोनों पक्ष के तर्क व साक्ष्य को गीर करते हैं तो प्राप्ती राम चन्द्र व उनके गवाह शिव प्रसाव की साक्ष्य कोई विश्वास उत्पन्न नहीं करती है। प्राप्ती राम चन्द्र की प्रतिरक्षा अधिवाद इस प्रकार की कि उसकी सिपाही राम मूर्ती सी.आई.एस.एफ. से वैमनस्यता थी और इस कारण से प्राप्ती को बोरी के कैस में सूझ फंसाया गया है। उसका यह भी डिफेंस प्लांष था कि प्राप्ती को बिबेदीमाईज करते हुए सूझ फंसाया गया है। योग्य मूक्तिक एवं न्यायाधिक मजिस्ट्रेट खेती ने प्राप्ती के खिलाफ बोरी का आरोप प्रमाणित नहीं पाया है और उसे बरी किया है इस कारण से उसके विरुद्ध कोई आरोप प्रमाणित नहीं होता है।

14. प्राप्ती राम चन्द्र के विरुद्ध धरेलू जांच के एम. डब्ल्यू. 1. महेंद्र सिंह, एम. डब्ल्यू. 2. राम मूर्ती, एम. डब्ल्यू. 3. सत्यवीर सिंह, एम. डब्ल्यू. 4. राखेन्द्र सिंह, एम. डब्ल्यू. 5. नारायण प्रसाव पेश हुए हैं। महेंद्र सिंह, राममूर्ती व सत्यवीर सिंह तीनों के बयानों की एक दूसरे से निम्न तथ्यों के बारे में सम्पुष्टि होती है कि ये तीनों ही गवाह 9-6-77 की राखि को ड्यूटी पर थे जिनमें एम. डब्ल्यू. 1. महेंद्र सिंह व राम मूर्ती आई.बी.एम. गेट पर थे व सत्यवीर सिंह के.सी.सी. के गेट पर ड्यूटी पर थे। श्री महेंद्र सिंह व राम मूर्ती के एक दूसरे की इन तथ्यों की बयान ताई की है कि राखि के लगभग दस बजे प्राप्ती राम चन्द्र एक सार्दिकल सहित आई.बी.एम. गेट पर आया जिसकी सार्दिकल के केरियर पर एक कम्बल में बिपटा हुआ कुछ सामान था जिसके बारे में प्राप्ती से उन्होंने पूछा तो उस सामान को ऐडिट नं. 3 पर ले जा रहे होना कहा। राम चन्द्र से उसका गेट पास होने को पूछा गया तो उसने गेट पास न होना कहा और जब उस कम्बल को खुलवा कर देखा गया तो उसमें बनाए हुआ गोहे की बनाए पोतन निकला और प्राप्ती से पूछने पर उसने 18-6-77 को उसकी राखि की प्राप्ती में पैसे की जरूरत होने के कारण उसने चुरा कर ले जाना कहा। जिसकी रिपोर्ट उन्होंने उसके सिफर ईचार्ज सत्यवीर सिंह की दी। सत्यवीर सिंह बहुत जाया और रामचन्द्र की उस सामान राखि गेट पर ले गया जिसकी सूचना

सत्यवीर सिंह ने उसके कम्पनी कनाबर सिद्धांत सिंह की ओर उसके बाद प्राप्ति के खिलाफ एक.आई.एच. 48/77 पाने में बर्न कराई गई। यद्यपि प्राप्ति की जूम से कतई इंकारो नहीं गई है और उससे गलत फसाया कहा गया है मगर नारायण प्रसाद की साक्ष्य से यह बखूबी प्रमाणित होता है कि वह 8-6-77 को चार बजे से रात के बारह बजे तक की शिफ्ट में कैबिनेज बर्नशॉप में इप्टी पर था उससे प्राप्ति ने एक गन मेटल रॉब इशू करवाई थी जो यह कहकर करवाई थी कि बुर्ल करवाने को चाहिए। वह गन मेटल जो.एम.इन्स्यू. 5 ने प्राप्ति की इशू की जो एक फीट लम्बी व 5-6 इंच चौड़ी घांकार की थी, जो रामचन्द्र ने उसे वापिस नहीं लौटाई। इस प्रकार नारायण प्रसाद की साक्ष्य से प्राप्ति राम चन्द्र के द्वारा बर्न नियति से गन मेटल रॉब बुला बनवाने को कहकर इशू करवाना मजाहिर है और इस प्रकार एच. इन्स्यू. 2 की साक्ष्य से यह प्रमाणित है कि प्राप्ति ने जब इस गन मेटल के टुकड़े सहित पकड़ा गया उस समय यह स्वीकार किया कि उसकी बहुत की शायी के पैरे की ज़रूरत के लिए वह लाया था। इससे गन मेटल का टुकड़ा अपनी कम्पनी से बर्न नियति से ले जाने बखूबी प्रमाणित है। मैं योग्य अधिकृतता अध्यापनी नियोजक के इस तर्क से सहमत हूँ कि प्राप्ति के द्वारा जो प्रति-रक्षा की साक्ष्य पेश की गई है वह डिस्क्रिप्ट व इनकम्प्लेट है। डी. इन्स्यू. 1 गिव प्रसाद ने घटना की को राखि की उसकी इप्टी शाम 7 बजे से मुबह 10-6-77 की नौ बजे तक होना ज्ञात किया है। उसने यह कहा है कि 9.45 पर जब वह आई.बी.एम. गेट पर पहुंचा तो उस वक्त वह प्रकटा हो उस गेट पर था और वहां मो.आई.एस.एफ. का एक आदमी था और उसी समय दूसरा आदमी एक लम्बा टुकड़ा लेकर वहां आया और उसके पास आकर उससे कहा कि वह वहां से चला जाए। उसने व्यक्त किया कि साढ़े ग्यारह बजे रात को राम चन्द्र प्राप्ति केन्टीन में उसके साथ-साथ ही रहा था उस वक्त वहां मो.आई.एस.एफ. वाला आया और राम चन्द्र को बुला ले गया। इस गवाह ने उसके प्रतिपरीक्षण में यह माना है कि जब 9.45 पर रात को वह आई.बी.एम. गेट पर पर आया तो वहां रामचन्द्र आर्य नहीं था जबकि नियोजक पक्ष की ओर से घटना 9.45 के आसपास की बताई गई है और इस गवाह ने अपने प्रतिपरीक्षण में मो.आई.एस.एफ. के व्यक्ति को ना जानना कहा। इससे यह स्पष्ट है कि उसे यह पता नहीं कि मो.आई.एस.एफ. का कौन व्यक्ति था। फिर गवाह ने यह भी माना है कि साढ़े ग्यारह बजे बाय पीने की उसकी छुट्टी नहीं थी और प्राप्ति रामचन्द्र उसके बाद वहां आया था। इस मो.आई.एस.एफ. के व्यक्ति के पास जो डी.इन्स्यू.-1 ने पीतल का टुकड़ा होना कहा वह किसी चीज में लिपटा हुआ न होना कहा है। इस गवाह ने जिरह में इस तथ्य को भी इन्कार किया कि प्राप्ति रामचन्द्र को किसी मो.आई.एस.एफ. के आदमी से भड़ते हुए उसे देखा हो। इसकी जिरह से यह भी स्पष्ट है कि प्राप्ति रामचन्द्र ने भी उसे कभी यह नहीं बताया कि उसका किसी मो.आई.एस.एफ. के आदमी से लड़ाई झगड़ा हुआ हो। इस गवाह ने प्राप्ति के प्रत्यक्षा अधिकार की सम्पुष्टि नहीं होती है कि प्राप्ति का राम मूर्ति से झगड़ा हुआ था। इस गवाह की जिरह से यह स्पष्ट है कि वह प्राप्ति से मिलता जुलता रहता है और आपस में एक दूसरे की और खबर लेते रहते हैं और शायद इसी कारण से वह गवाही भी देने पाया। डी.इन्स्यू.-1 एक स्वतंत्र गवाह प्रतीत नहीं होता है। इसकी साक्ष्य बनावटी प्रतीत होती है और विश्वसनीय नहीं पाई जाती है। डी.इन्स्यू.-2 रामचन्द्र प्राप्ति स्वयं की साक्ष्य भी विश्वसनीय प्रतीत नहीं होती है। प्राप्ति ने 8-6-77 को छुट्टी पर होना माना है परन्तु उसने यह जाहिर किया है कि उसने सुपरवाइजर से खाना खाने की छुट्टी साढ़े सात बजे शाम मांगता कहा और खाना खाने चला गया कहा और फिर बाय में 11.45 बजे रात्री में केन्टीन की तरफ आ गया और बाय पीने अन्दर आता कहा और बाय में मो.आई.एस.एफ. का आदमी उसे बुला कर ले गया और आई.बी.एम. गेट पर जाने पर उसे बेर लेना और गुंडा आरोप लगाना कहा। मगर प्राप्ति के प्रति परीक्षण से यह स्पष्टतः प्रतीत होता है कि उसका मो.आई.एस.एफ. के राम मूर्ति से झगड़ा होने की बात सही नहीं थी और बाद की एक बनावटी हुई बनावटी बात की। जिरह में प्राप्ति ने यह कहा कि उसका झगड़ा राममूर्ति से उसी दिन हुआ मगर उस झगड़े के बारे में उसने किसी सुपरवाइजर आदि से नहीं

कहा और इस झगड़े का प्रत्यक्षदर्शी गवाह मूलबन्ध होता कहा। इस गवाह को भी प्राप्ति ने पेश नहीं किया। उसने मूलबन्ध का नाम गवाह की सूची में भी नहीं दिया। प्राप्ति ने साढ़े सात बजे के बाद स्वयं को इप्टी पर न जाना कहा और प्राप्ति साढ़े ग्यारह बजे उसके घर से केन्टीन में बाय पीने पहुंचा कहा है। मैं योग्य अधिकृतता अध्यापनी नियोजक की इस बहस से सहमत हूँ कि प्राप्ति की यह कथन श्रवणिक प्रतीत होता है। प्राप्ति स्वयं मानता है कि उसकी नारायण प्रसाद दूध रिडीयर से कोई लड़ाई नहीं है। प्राप्ति स्वयं उसकी जिरह में यह मानता है कि झूठे फसाने के के बारे में उसने तारीख 9-6-77 को घटना के बाद भी किसी को नहीं बताया। यद्यपि प्राप्ति गलत फसाया गया था तो स्वभाविक था कि वह गलत फसाने के बारे में कुछ व्यक्तियों को ज़रूर कहता। फिर घटना के समय आई.बी.एम. गेट पर मो.आई.एस.एफ. वालों द्वारा उसे काफी पीटना कहा है मगर प्राप्ति चल कर यह कह दिया कि उसके मारपीट की कोई खोट नहीं आई। काफी पीटने पर खोट आना स्वाभाविक था। या तो उसे पीटा नहीं गया जो खोट नहीं आई। बहरहाल गवाह का यह कथन कन्सि-टेड नहीं है। फिर प्राप्ति चल कर गवाह उसके प्रति परीक्षण में यह मानता है कि मारपीट के बारे में भी कोई बात किसी को आख तक उसने नहीं कही है। जब उसके साथ मारपीट हुई तो उसका दूसरे से जिक्र करना स्वाभाविक है। फिर प्राप्ति यह भी नहीं बता पाया कि मो.आई.एस.एफ. का कौन आदमी आया था और उसे बुला कर ले गया था। फिर प्राप्ति चल कर त्यागी का नाम लेता है और त्यागी से उसका कोई झगड़ा न होना कहा है। प्राप्ति उस रोज 8-9 व्यक्तियों, मो.आई.एस.एफ. से मिलना कहा है मगर किसी से भी राम मूर्ति से झगड़ा होने की बात नहीं कहता है। और राम मूर्ति से झगड़े की बात प्राप्ति ने पहली बार इन्कवारो में कहा है। इससे यह प्रमाणित है कि राममूर्ति से प्राप्ति का झगड़ा होना की बात पहली बार उसने बाय में ही कही। जिससे इस बात की पुष्टि होती है कि प्राप्ति का यह डिफेन्स पॉस्टर पॉट था। परन्तु जांच में प्राप्ति रामचन्द्र आर्य द्वारा 8-6-77 को लगभग इस बजे के आसपास आई.बी.एम. गेट के पास गन मेटल का एक टुकड़ा करीब 1 फुट लम्बा व 5-6 इंच चौड़ा व 30-32 किलोग्राम वजनी बर्न ध्वान्ती से कम्बल में लपेट कर उसकी छारिकल पर रखकर आई.बी.एम. गेट से बाहर ले जाते हुए पकड़ा जाना बखूबी प्रमाणित होता है। यह भी तथ्य बखूबी प्रमाणित पाया जाता है कि प्राप्ति ने गन मेटल का टुकड़ा बख्शान्ती नारायण प्रसाद से हाथ करवाया था और एम.इन्स्यू.-4 की साक्ष्य से यह प्रमाणित होता है कि प्राप्ति रामचन्द्र आर्य लगभग साढ़े नौ बजे से उसकी इप्टी पर नहीं था। इस प्रकार प्राप्ति के विरुद्ध दी गई चार्जशीट में 8-6-77 को करीब इस बजे शाम गन मेटल वजनी 30 किलो, जो अध्यापनी कम्पनी की मिलिकयत का था, चुरा कर ले जाना प्रमाणित पाया जाता है। प्राप्ति के खिलाफ यह चुराचरण का गम्भीर आरोप सिद्ध होता है। उसकी सेवा समाप्त करना किसी प्रकार अनुचित या भवेष नहीं है। इस प्रकार अध्यापनी कम्पनी की गन मेटल के टुकड़े को चुरा कर ले जाना कम्पनी के सर्टिफाइड स्ट्रेण्डिंग आईई के क्लॉज 39(2)(iii) सप्लिड धारा II के तहत यह गम्भीर चुराचरण है और इस चुराचरण के कारण प्राप्ति की सेवा समाप्त किया जाना न्याय संगत प्रतीत होता है। इस चुराचरण को देखते हुए प्राप्ति को भी गई बण्ड किसी प्रकार अनुपस्थित प्रतीत नहीं होता है है और प्राप्ति कोई अनुतोष पाने का अधिकारी नहीं है।

15. हिन्दुस्तान कोपर लिमिटेड खेतज्ञानगर के प्रबन्धक खेतड़ी कापर काम्प्लेक्स द्वारा श्री राम चन्द्र आर्य मैकेनिक "ए" कोड न. 27-493 को दिनांक 28-9-79 को सेवा मुक्त करना उचित एवं न्याय संगत पाया जाता है और प्राप्ति राम चन्द्र आर्य कोई सहायता या अनुतोष पाने का अधिकारी नहीं है। अध्यापनी प्रतिनिधि अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम राज्य सरकार की बास्ते प्रकाशनाथ भेजी जाए।

प्रताप सिंह यादव, न्यायाधीश
[का. सं. एल-42012/3/83-डी. III(बी)]

का. का. 3666—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)
की धारा 17 के अन्वय में, केन्द्रीय सरकार एयर इंडिया के प्रबंधन
से सम्बद्ध नियंत्रकों और उनके कर्मचारियों के बीच, अग्रवृत्त में निर्दिष्ट
औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली
के पंचाद का प्रकाशित करते हैं, जो केन्द्रीय सरकार को 29-11-88
को प्राप्त हुआ था।

S.O. 3666.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Air India and their workmen, which was received by the Central Government on the 29-11-88.

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW
DELHI

I.D. No. 39/85

In the matter of dispute between :

Shri Chander Bahadur, RZ 40/231 West Sagarpur, New
Delhi-46.

Versus

The Deputy Personnel Manager,
Air India, Himalaya House,
Kasturba Gandhi Marg,
New Delhi.

APPEARANCES :

Workman in person.

Shri K. B. Swamy for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012(2)/85-D.II(B) dated 2-9-85 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Air India in terminating the services of Shri Chander Bahadur loader/Handyman Palam Airport w.e.f. 9-6-76 is legal and justified? If not to what relief the workman is entitled?"

2. The case of the workman as set forth in his statement of claim is that he joined service with Air India Cargo Section at Palam Airport, New Delhi as a Loader/Handyman w.e.f. 14-7-72. He was not issued any appointment letter but he continued to serve till 9-6-76 when his services were illegally terminated. In accordance with the Air India Employees Service Regulations 1976 he was interviewed in July, 1973 for permanent absorption and he was successful and found fit medically. He agitated strongly on a number of occasions for his permanent absorption which caused annoyance to the Management. Therefore his services were terminated some persons junior to him such as Shri Kuldip, R. C. Trivedi, Amar Nath etc. were retained in service. On 9-6-76 the workman received oral order from the Security Officer in-charge Palam Airport not to attend his duty and he was later on falsely implicated in a criminal case at the instance of some officers of Air India. No enquiry was ever conducted against him. Some other employees like S/Shri Shiv Parshad, Chatter Singh, Tara Chand Gupta etc. who were also implicated in the criminal case and were placed under suspension and faced departmental enquiry have been reinstated in service. The petitioner has been discriminated against as compared to other employees like one Shri Lallu Massi who was alleged to have been involved in a criminal case and proceedings are still pending against him but he has been reinstated. On the basis of these allegations it has been pleaded that the dismissal of the service of the workman w.e.f. 9-7-76 is illegal, unjustified, malafide, arbitrary and void-abinitio which amounts to victimisation and unfair labour practice. No notice regarding termination was ever served on the workman nor any pay in lieu of notice was given to him and thus termination is violative of section 25-F of

the I.D. Act. The workman has therefore, sought his reinstatement with continuity of service and with full back wages.

3. The Management in its written statement raised preliminary objections that the reference is bad in law as it is highly belated. The services of the workman were terminated in June, 1976 and the representation was made by the Workman to the ALC(C) New Delhi as late as 11-4-84 which is 8 years after the alleged termination. The reference is also illegal for the reason that earlier the ALC had declined to refer the case to the Government in Conciliation proceedings and the file was consigned to the records. No new facts had been brought before the Conciliation machinery and there were no new circumstances, warranting reconsideration of the earlier decision. It was denied that the workman had continuously worked from 14-7-72 to 9-6-76 and it was submitted that the workman was purely temporary casual employee and he worked intermittently as per recruitments on daily basis and he never worked continuously for 240 days at any point of time, and the last date on which he was engaged as a casual worker was on 14-6-76. The workman had no right to be absorbed on a permanent basis. Had the workman not been involved in this case instituted against him the Management could have considered him for appointment as a permanent employee because only these employees who are cleared by the Police Authority can be engaged as Labourers at the Air Airport and, therefore, there was no question of consideration of the case of the workman for permanent absorption. Only those casual employees were given permanent appointment who had unblemished police record. Since the workman was employed on casual basis there was no question of serving any notice on him or holding any enquiry. The allegations of discrimination were controverted.

4. The preliminary objection of the Management that the reference is illegal for the reason that in the earlier Conciliation proceedings the file was consigned to the record room and that there were no special circumstances for reconsideration is frivolous and without any merit because the Government has fullpower to reconsider and review its own orders. Moreover, in the present case it is only ALC(C) who is said to have consigned the file to the record. The present reference has been made by the Central Government in the Ministry of Labour who has in its wisdom though it a fit case for reference to this Tribunal and there is no illegality in this action. Hence this objection of the Management is rejected.

5. However, there is considerable merit in the other preliminary objection of the Management that the case of the workman suffer from the laches. According to the workman himself, his services were terminated w.e.f. 9-6-76. The present order of reference was made only on 2-9-85. The earliest representation by the workman appears to have been made only on 6-1-81 when he served a notice of even date on the Management though his counsel Shri D. K. Hira. The Management also admits that the workman had made a representation dated 24-1-81 to the ALC in which the file was consigned to the record room. The Management has further alleged that the present reference is an result of the representation of the workman dated 11-4-84 to the ALC. Although the workman has alleged that he had been making representations earlier and has given dates of those representations as 7-3-77, 7-8-78, 30-8-78, 26-9-80, 29-11-83, and 29-3-84 yet the workman has failed to prove that he had made any such representations earlier to the serving of the legal notice dated 6-1-81. It appears that these dates have been mentioned and certain postal receipt and copies of representations have been forged, or manufacture only to cover up the inordinate delay in raising the present dispute. This delay indicates that the workman was not seriously interested in serving the Management and he has raised the dispute only for pecuniary advantage by the abuse of the Conciliation Machinery and the process of the court. If the workman was seriously interested in serving the Management even after his alleged termination, he should have raised the dispute soon after his termination but in any case within at the most six months or one year. However, the first representation he made was only in form of legal notice on 6-1-81 i.e. after a lapse of 4-1/2 years. After the earlier conciliation proceedings had been closed the workman again went into unexplained silence and made a fresh representation.

tation only on 11-4-84. There is well known maxim of equity that delay defeats equity or equity aids the vigilant. Hon'ble Supreme Court of India has in a number of cases held the delay of even 1 to 1-1/2 years as unreasonable and that aggrieved person should reach the court within six months or one year. In the authority P. S. Sadasivawamy Vs. State of Tamil Nadu AIR 1974 Supreme Court, 2271 it was held as under :

"A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward state claims and try to unsettle settled matters. The petitioners' petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It close the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

Similarly in the authority cited as Rattan Lal Vs. Union of India and others 1987(2) SLR 343 it was held by the Central Administrative Tribunal, Gauhati as under :

"6...More than anything else, the claims must be regarded as stale. Although impugned documents are of 1965 and the cause of action for grievance if any arose then. In respect of such unduly delayed service matters we would be inclined to be guided by the Supreme Court decisions in P. S. Sadasivawamy V. State of Tamil Nadu, SC 1974 page 227."

Similarly in the authority cited as Bombay Union of Journalists and others and State of Bombay and another I.L.J. 1964 (1) 351 Supreme Court of India, it was held "that if the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference."

6. The result of this inordinate delay is that while the workman has not been able to produce any evidence for his continuous employment for a period of one year before the date of termination 9-6-76, the Management witness MW-1 Shri S. M. Puri has stated that the case being very old the record is not available and they do not maintain the record of casual workman for more than 4 or 5 years. Therefore, it is not possible to determine whether or not the workman has actually worked for a continuous period of one year as defined in section 25-B of the ID Act in order for to him have sailed into the protection of section 25-F and the fault entirely lies with the workman and it is also not possible to hold that the Management is guilty of violation of provisions of section 25-F of the ID Act because of the inordinate delay in raising the dispute. Hence the claim of the workman is liable to be rejected on the short ground of laches.

7. It is also pertinent to note that the workman was admittedly involved in criminal case pertaining to theft of Cargo and the said criminal case is still pending against the workman before the Magistrate in the Patiala House Courts, New Delhi. The Air India is an International Airline and is a service oriented Commercial organisation and in such an organisation person with dubious character, have no place. It is a case of loss of confidence and the workman is not entitled to reinstatement in an organisation like Air India whose reputation depends upon the quality of service rendered by it and the reputation of the organisation is bound to be adversely affected if it is known that it has got on its rolls persons who are alleged to have been guilty of committing theft of Cargo and criminal proceedings are pending against them.

8. In view of the above discussion, the workman is not entitled to any relief and this reference is disposed of accordingly.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Govt. for necessary action at their end.

22nd November, 1988.

G. S. KALRA, Presiding Officer
[F. No. L-11012/2/85-D.II.B/D.III(B)]

का.प्रा. 366 7--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स राजस्थान स्टेट माइंस एण्ड मिनरल्स लिमिटेड, उदयपुर के प्रबन्धताज्ञ से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-11-88 को प्राप्त हुआ था।

S.O. 3667.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Mines & Minerals Limited, Udaipur and their workmen, which was received by the Central Government on the 25-11-88.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी.-77/87

रेकर्ड नं.: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना सं. एल. 29012/2/87-डी-III (बी) दिनांक 23-7-87

श्री विनय प्रताप सिंह आरक्षक श्री उमा शंकर सिंह, मामा की चक्की, इन्फाईड सुरजपोल डाकघर, उदयपुर (राजस्थान)

प्रा प्राप्ति पक्ष

वतम

महाप्रबंधक, राजस्थान स्टेट माइंस एण्ड मिनरल्स लि.

4, मीरा मार्ग, उदयपुर (राजस्थान)

..... नियोजक पक्ष

उपस्थिति

माननीय प्रताप सिंह यादव, आर.एच.जे. एस.

श्रमिक पक्ष की ओर से :

श्री विनय प्रताप सिंह स्वयं

नियोजक पक्ष की ओर से :

1. श्री वीनेन्द्र प्रताप अग्रवाल

2 श्री पी.एल. माधुरी आफिसर इंचार्ज

दिनांक अर्बाई : 26-9-88

अर्बाई

डिस्क आफिसर, श्रम मंत्रालय, भारत सरकार, नई दिल्ली में निम्न-लिखित विवाद ज्ञानी अधिसूचना संख्या एस.-29012/2/87-डी-III (बी) दिनांक 23-7-87 द्वारा बास्ते अधिनियम इस न्यायाधिकरण को प्रेषित किया है :

"Whether the action of the management of M/s. R.S.M.M. Ltd., Udaipur in dismissing Shri V. P. Singh, Welder 'A' of their Jhamarkotra Mines is just and legal? If not, to what relief is the concerned worker entitled?"

2. बाद प्राप्ति निदेशन, इसे विवाद को इस न्यायाधिकरण में पंजीकृत किया गया व उक्त पक्षकाराम को नोटिस जरिए पंजीकृत डाक भेजे गए। श्रमिक विनय प्रताप सिंह पुत्र श्री उमाशंकर सिंह, जिसे तत्पश्चात् श्रमिक लिखा जाएगा ने अपना स्टेटमेंट आफ क्लेम दिनांक 20-1-88 को इस प्रकार प्रस्तुत किया है कि उसकी निवृत्ति वेल्डर के पद पर कैटेगरी 4 में दिनांक 17-10-79 को कार्यार्थी पञ्चमक राज. स्टेट माइंस एण्ड मिनरल्स लि. उदयपुर द्वारा की गई थी। उसके बाद प्राप्ति श्रमिक को उसकी कार्यक्षमता एवं उसकी मेहनत को ध्यान में रखते हुए अप्रार्थी द्वारा वेल्डर

“ए” कीटगरी-6 में दिनांक 1-1-85 को पदोन्नत कर दिया गया। अप्राप्ति की तत्पश्चात् नियोजक लिखा जाएगा। आगे व्यक्त किया कि श्रमिक की सेवाएं दिनांक 7-2-86 को तत्काल प्रभाव से निराधार आरोप लगाते हुए समाप्त कर दी गईं जब कि श्रमिक प्रति वर्ष 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक श्रमिक हो गया था। उसकी सेवाएं समाप्त करते समय कोई वरीयता सूची नहीं बनाई गई, न ही छटनी का मुआयजा दिया गया। उससे विरुद्ध यह गलत आरोप लगाया गया कि वह मुलाम रखन बाबूराव शर्मा, काबूराव, रतन दास यादव हमसलाहों द्वारा उप प्रबंधक कामिक श्री सज्जन सिंह शक्तावत को कमरे में अपराधिक आशय से घुस कर उसके साथ नात, घृमों व मुक्तों से मार पीट की व श्री शक्तावत को गम्भीर रूप से घायल कर दिया और सेवा समाप्त आरोप में प्रार्थी के विरुद्ध इस गम्भीर दुराचार को आरोप सिद्ध मानते हुए उसकी सेवा समाप्त की। आगे यह भी आरोप लगाया कि सेवा समाप्ति में नियोजक के द्वारा 25 एफ. अधिनियम का भी उल्लंघन किया गया। यह प्रार्थना की कि श्रमिक को सैद्धांतिक एवं निरन्तर सेवा में लिया जावे व सभी लाभ दिलाए जावें जो श्रमिक को निरन्तर सेवा में रहते हुए प्राप्त होते हैं।

3. नियोजक पट की ओर से उक्त स्टेटमेंट आफ फेस का प्रतिवाद इस आधार पर पेश किया गया कि प्रार्थी श्रमिक की सेवाएं दिनांक 7-2-88 के द्वारा समाप्त की गई थी परन्तु इसे नकारा कि उसकी सेवाएं असत्य एवं निराधार आरोप लगाते हुए समाप्त की गई हैं। इस संबंध में आगे यह व्यक्त किया गया कि प्रार्थी व उसके अन्य साथियों ने उप प्रबंधक कामिक श्री एस.एस. शक्तावत पर बिना किसी कारण दिनांक 6-2-86 को उनके कार्यालय में प्रवेश कर हमला किया और उन्हें बिना किसी कारण के चोटें पहुंचाई जिससे वह गम्भीर रूप से घायल हो गए। इस घटना से माइन्स व मा स्स कार्यालय में अव्यवस्था, भय व असुरक्षा तथा आतंक का वातावरण बन गया व श्रमिक को विचल होकर तुरन्त प्रभाव से बर्खास्त करना पड़ा। इन तथ्यों को भी मकारा कि श्रमिक से कनिष्ठ व्यक्ति प्रार्थी कार्यरत हैं। आगे यह भी लिखाया कि इस विवाद में 25 एफ. औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। आगे यह भी लिखाया कि प्रार्थी श्रमिक की सेवा मुक्ति का आदेश नियमानुसार दिया गया है और क्योंकि प्रार्थी उपर्युक्त नहीं था इसलिए कोई आदेशों के अनुसार रजिस्टर्ड डक से उसके अंतिम ज्ञात पते पर सेवा समाप्ति आदेश भेजा व नोटिस बोर्ड पर चरसा किया। आगे प्रार्थना की कि प्रार्थी कोई राहत पाने का अधिकारी नहीं है। उसका प्रार्थना पत्र निरस्त किया जाकर नो डिस्पूट अवाइल पारित किया जावे।

4. अप्राप्ति नियोजक की दण्डास्त पर दिनांक 28-7-83 को उन्हें चार्ज सिद्ध करने की उनकी प्रार्थना पक्ष स्वीकार की गई जबकि न्यायालय में आरोप सिद्ध करने के लिए पत्रावली को हर सम्बन्ध की कार्यवाही के लिए नियत किया हुआ था तो अप्राप्ति नियोजक के अधिसूचक 8 चार्ज श्री पी.एन. माथुर उप प्रबंधक कामिक राजस्थान स्टेट माइन्स एण्ड डिस्पूट्स लि. व नियोजक के वकील श्री बीनेन्द्र प्रसाद अग्रवाल ने एवं श्रमिक विनय प्रताप सिंह ने इस न्यायाधिकरण में जयपुर में एक प्रार्थना पत्र इस आशय का पेश किया कि प्रार्थी श्रमिक व अप्राप्ति नियोजक कम्पनी में दिनांक 6-9-88 की समझौता हो गया है और उक्त समझौता के अनुसार प्रार्थी श्रमिक ने कुल रकम उसने प्राप्त कर ली है। अतः किसी प्रकार का विवाद शेष नहीं रहा है। समझौते को भी रिवाइ पर लिए जाने की प्रार्थना की। उभय पक्षकारण के द्वारा पेश किये गये समझौते को रिकार्ड पर रखा गया व प्रार्थी विनय प्रताप सिंह के द्वारा पेश की गई रसीद को भी रिकार्ड पर रखा गया। उनके द्वारा पेश किए गए समझौते को भी उभय पक्षकारण को पढ़ कर सुनाया और समझाया गया। समझौता स्वीकृति से, बिना किसी डर, भय, बलात् या कालब के करना स्वीकार किया और श्री विनय प्रताप सिंह ने यह भी स्वीकार किया कि मुताबिक समझौता 1,24,140/- रुपये में से 1,08,760/- रुपये श्रमिक ने प्राप्त कर लिए हैं और शेष रकम टैक्स की छूट की गई है और कोई विवाद शेष नहीं रहा है।

3103 GI/88-7.

5. अतः उपरोक्त सभी तथ्यों को देखते हुए इस विवाद में नो डिस्पूट अवाइल पारित किया जाना है। अवाइल की प्रतिनिधि केन्द्रीय सरकार को नियमानुसार प्रकाशनार्थ भेजी जाए।

प्रताप सिंह यादव, न्यायाधीश
[सं. एन-29012/2/87-डी-III (बी)]

का.आ. 3668-—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार मैंने राजस्थान स्टेट माइन्स एण्ड डिस्पूट्स लिमिटेड उदयपुर के प्रबंधन से सम्बन्धित नियोजक और उनके कर्मचारियों के बीच, अतुल्य में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-11-88 को प्राप्त हुआ था।

S.O. 3668.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Mines and Minerals Limited, Udaipur and their workmen, which was received by the Central Government on the 25-11-88.

अधिलेख

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 65/87

रेफरेन्स : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना सं. एन, 29012/4/87-डी. III (बी) दिनांक 24-8-87

श्री कालू लाल धारमज और गांगूजी, नगर लिट्ट मंदिर के नजदक, भिडर, उदयपुर। प्रार्थी पक्ष

बनाम

महाप्रबंधक, राजस्थान स्टेट माइन्स एण्ड डिस्पूट्स लि., 4, मोरा मार्ग, उदयपुर (राजस्थान) नियोजक पक्ष

उपस्थिति

माननीय श्री प्रताप लिट्ट यादव, आर. एच. जे. एस.

श्रमिक पक्ष की ओर से : श्री कालू लाल स्वयं

नियोजक पक्ष की ओर से :

1. श्री बीनेन्द्र प्रसाद अग्रवाल

2. श्री पी. एल. माथुर अधिसूचक

इंचार्ज

दिनांक : 06-9-88

इवाइ

इस अधिसूचक श्रम मंत्रालय, भारत सरकार, नई दिल्ली ने निम्न लिखित विवाद अपनी अतिरिक्त संज्ञा एन. 29012/4/87-डी. III (बी) दिनांक 24-8-87 द्वारा वास्तविक अधिनियम इस न्यायाधिकरण को प्रेषित किया है :-

“Whether the action of the management of M/s. R.S.M.M. Ltd., Udaipur in dismissing Shri Kalu Lal, Welder 'A' of their Jhamarkotra Mines is justified and legal? If not, to what relief is the concerned worker entitled?”

2. वाइ प्राप्ति निर्गत इस विवाद को इस न्यायाधिकरण में पेश किया गया व उभय पक्षकारण को नोटिस करिए पंजीकृत साक्ष्य लेवे गए। श्रमिक कालू लाल पुत्र श्री गांगूजी, जिते तत्पश्चात् श्रमिक

लिखा जाएगा, ने अपने स्टेटमेंट आफ क्लेम दिनांक 12-2-88 को इस प्रकार प्रस्तुत किया कि उसकी नियुक्ति दिनांक 10-4-79 को बतौर वैंडर कैटेगरी 4 में की गई तथा 1-4-80 में कैटेगरी 5 वैंडर "ब" के पद पर पदस्थापित कर दिया गया व प्राथी अधिक की कार्यक्षमता अनुभव एवं योग्यता के आधार पर 1-10-84 को वैंडर "अ" कैटेगरी-6 में पदोन्नत कर दिया गया। अप्राथी को तत्पश्चात् नियोजक लिखा जाएगा। आगे अर्जत किया कि अधिक की सेवाएं दिनांक 7-2-86 को तत्काल प्रभाव से निराधार आरोप लगाते हुए समाप्त कर दी गई। जबकि अधिक प्रति-वर्ष 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक अधिक हो गया था। उसकी सेवाएं समाप्त करने समय जोड़े वरिष्ठता सूची नहीं बनाई गई, न ही छंटियों का मुआवजा दिया गया। उसके विरुद्ध यह न्याय आरोप लगाया गया कि यह निय प्रताप सिंह, कुलाम रमूल, शानू लाल शर्मा, रतन लाल यादव, हम सलाह होकर उप प्रबन्धक कामिक श्री गजवन सिंह रस्तावत के कमरे में अवैध अधिक आश्रय से धुस कर उनके साथ साथ बूझों व मुक्कों से मारपीट की व श्री शक्तावत को गम्भीर रूप से घायल कर दिया और सेवा समाप्ति आदेश में प्राथी के विरुद्ध इस गम्भीर बुराचरण का आरोप सिद्ध मानते हुए उसकी सेवा समाप्त की। आगे यह भी आरोप लगाया कि सेवा समाप्ति में नियोजक के द्वारा 25-एफ अधिनियम का भी उल्लंघन किया गया। यह प्रार्थना की कि अधिक को सदैवस्थित एवं निरन्तर सेवा में लिया जावे व सभी लाभ दिलाए जाएं जो अधिक को निरन्तर सेवा में रहते हुए प्राप्त होते हैं।

3. नियोजक पक्ष की ओर से उक्त स्टेटमेंट आफ क्लेम का प्रतिवाद इस आधार पर पेश किया गया कि प्राथी अधिक की सेवाएं दिनांक 7-2-86 के द्वारा समाप्त की गई थीं परन्तु उसे तकारा कि उसकी सेवाएं असत्य एवं निराधार आरोप लगाते हुए समाप्त की गईं हैं। इस सम्बन्ध में आगे यह व्यक्त किया कि प्राथी व उसके अन्य साथियों ने उप प्रबन्धक कामिक श्री एस. एस. शक्तावत पर बिना किसी कारण दिनांक 6-2-86 को उनके कार्यालय में प्रवेश कर हमला किया और उन्हें बिना कारण से चोटें पहुंचाई जिससे वह गम्भीर रूप से घायल हो गए। इस घटना से माइल्स व माइल्स कार्यालय में अव्यवस्था गय व अगुस्ता गया अर्तक का वातावरण बन गया व अधिक को विवश होकर मुरस्त प्रभाव से बर्खास्त करना पड़ा। इस गथ्य को भी तकारा कि प्राथी अधिक से कनिष्ठ व्यक्ति अभी कार्यरत हैं। आगे यह भी लिखाया कि इस विवाद में 25 एफ—औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। आगे यह भी लिखाया कि प्राथी अधिक की सेवानुक्ति का आदेश नियमानुसार दिया गया है और क्योंकि प्राथी उपरबन्ध नहीं था इसलिए ग्याई आदेशों के अनुसार रजिस्टर्ड डाक से उसके अंतिम जान पते पर सेवा समाप्ति आदेश भेजा व गोटिम चोहरे पर लिपिका दिया। आगे प्रार्थना की कि प्राथी कोई राहत पाने का अधिकारी नहीं हैं। उसका प्रार्थना पत्र निरस्त किया जाए और "नो डिस्पूट अवार्ड" पारित किया जाये।

4. अप्राथी नियोजक की बरखास्त पर दिनांक 28-7-88 को उन्हें चार्ज सिद्ध करने की उनको प्रार्थना पत्र स्वीकार की गई जबकि न्यायालय में आरोप सिद्ध करने के लिए पत्रावली को इस सम्बन्ध की कार्यवाही के लिए नियत किया हुआ था तो अप्राथी नियोजक के आफि-सर इंचार्ज श्री पी. एन. माधुर, उप प्रबन्धक कामिक, राजस्थान स्टेट माइल्स एण्ड मिनरल्स लि. व नियोजक के वकील श्री विनेन्द्र प्रसाद अग्रवाल ने एवं अधिक कालू लाल ने इस न्यायाधिकरण में अजपुर में एक प्रार्थना पत्र इस आशय का पेश किया कि प्राथी अधिक व अप्राथी नियोजक कम्पनी में दिनांक 6-9-88 को समझौता हो गया है और उक्त समझौते के अनुसार प्राथी अधिक ने कुल रुकम उनसे प्राप्त कर ली है। अतः किसी प्रकार का विवाद शेष नहीं रहा है। समझौते को भी रिकार्ड पर लिए जाने की प्रार्थना की। उभय पक्षकारान के द्वारा पेश किए गए समझौते को रिकार्ड पर लिया गया व प्राथी कालू लाल के

द्वारा पेश की गई रसीद को भी रिकार्ड पर लिया। उक्त द्वारा पेश किए गए समझौते को भी उभय पक्षकारान को पक्षकर मुताया और सम-झाया गया। समझौता स्पेच्छा में बिना किसी डर, भय, लायब या दबाव के करता स्वीकार किया और श्री कालू लाल ने यह भी स्वीकार किया कि मुताबिक समझौते, 1,24,140 रुपये में से 1,06,760/- रुपये अधिक ने प्राप्त कर लिये हैं ब्रजा टैक्स को काट लिया है और कोई विवाद शेष नहीं रहा है।

5. अतः उल्लेख गयी तथ्यों को देखते हुए इस विवाद में नो डिस्पूट अवार्ड पारित किया जाता है। अवार्ड की प्रतिनिधि के द्वारा मरकार को निरमानसार प्रकाशित भीजे जाए।

प्रताप सिंह यादव, न्यायधीश
[नं० एन.-29012/4/87-डी. III (बी)]

बी. के. शर्मा हेरफ अधिकारी

शुद्धिपत्र

नई दिल्ली, 1 दिसम्बर, 1988

का.आ. 3669—सार के राजपत्र, भाग-II, खंड 3, उप खंड (ii) में प्रकाशित तारीख 26 अक्तूबर, 1988 की अधिसूचना संख्या एस 32023/11/83-डब्ल्यू.सी. (एम. डब्ल्यू.) की पंक्ति 7 में "श्री जी. एस. अस्नानी, उप मुख्य श्रमायुक्त (केन्द्रीय), नई दिल्ली" का "श्री जी. सी. अस्नानी, उप मुख्य श्रमायुक्त (केन्द्रीय), नई दिल्ली" पढ़ें।

[सं. एस-32023/11/83 डब्ल्यू.सी. (एम. डब्ल्यू.)]
श्रीमती पी. वेंकटाचलम, उप सचिव

CORRIGENDUM

New Delhi, the 1st December, 1988

S.O. 3669.—In the Notification No. S-32023/11/83-WC-(MW) dated the 26th October, 1988 published in the Gazette of India (PART II, Section 3, Sub-Section (ii), in line 7 for "Shri G. S. Asnani, Deputy Chief Labour Commissioner (Central), New Delhi", read "Shri G. C. Asnani, Deputy Chief Labour Commissioner (Central), New Delhi".

[No. S-32023/11/83-WC-(MW)]
SMT. PADMA VENKATACHALAM, Dy. Secy.

नई दिल्ली, 1 दिसम्बर, 1988

का.आ. 3670—औद्योगिक विवाद अधिनियम, 1947 (1947 का 17) की धारा 33ग की उपधारा (2) द्वारा प्रत्यक्ष शक्तियों का प्रयोग करने हुए गया इस न्यायालय की तारीख 19-9-1973 की अधि-सूचना संख्या का.आ. 2922 का अधिष्ठापन करने हुए और तारीख 20-3-68 की अधिसूचना संख्या का.आ. 1176 में मानिकसंशोधन करने हुए केन्द्रीय सरकार एवं श्रम, रोजगार और पुनर्वास न्यायालय (श्रम एवं रोज-गार विभाग) का तारीख 19 दिसम्बर, 1967 की अधिसूचना संख्या का.आ. 1650 में निम्नलिखित और संशोधन करती है अर्थात्—

उक्त अधिसूचना के साथ प्रबंध की गई मरगाय में—

(i) क्रमांक 1 तथा 5 पर जो गई प्रविष्टियां के लिए प्रमशः निम्नलिखित परिवर्तित प्रतिस्थापित की जाएगी—

1	2	3
1. भारत सरकार के पूर्व श्रम एवं रोजगार संज्ञावली की तारीख 30 जनवरी, 1960 की अधिसूचना संख्या का.आ. 1954 के तहत उक्त अधि-नियम की धारा 7 के अर्धीन गठित श्रम न्यायालय संख्या 1, धनबाद।	दो. सिद्धमूल, पलामू, भोजपुर, रोहतास, सारन, मिर्जापुर, बमभारन, पश्चिमी बमभारन, मजफ्फरपुर, वैशाली, सौतमदी, बेगु सराय।	पटना, जयपुरीबाग, तथा नवदाह, इधका, गोड्डा, माहेव गंज, देवघर जिन तया धनबाद के सबर उप-मण्डल को छोड़कर बिहार के सभी जिले।

1	2	3	1	2	3
6.	भारत सरकार के पूर्व अम एवं रोबी, सिन्धुम, पलामू, भोजपुर, रोहतास, सारन, सिवां, पूर्वी चम्पारन, 22 मई, 1965 की अधि- पत्रिका चम्पारन, मुजफ्फरपुर, सूचना संख्या का.मा. 1697 वैशाली, सितामर्ही, बेगूसराय, के तहत उक्त अधिनियम की धारा 7 के अधीन गठित तथा बनबाद का सदर उप-नंदा। अम म्यालय संख्या 2, बनबाद		8क.	भारत सरकार के अम मंत्रालय पश्चिम बंगाल के बर्दवान, बोरभूम, को तारीख 5.10.87 की बांकुरा तथा पुरुलिया जिले और अधिसूचना संख्या का.मा. बिहार के मुफ्फ, गोखी, साहेब मंथ 2862 के तहत उक्त अधि- तथा देशवर जिले। सूचना की धारा 7 के अधीन गठित अम म्यालय, भासमसोल।	

(ii) क्रमांक 8 पर की गई प्रविष्टियों के लिए निम्नलिखित प्रविष्टियों प्रति स्थापित की जाएंगी यथातः :-

8. भारत सरकार के पूर्व अम बर्दवान, बोरभूम, बांकुरा तथा एवं रोहतास एवं पुनर्वास पुरुलिया जिलों को छोड़कर पश्चिम मंत्रालय (अम एवं रोहतास बंगाल राज्य। विभाग) की तारीख 24 अगस्त, 1966 की अधिसूचना संख्या का.मा. 2652 के तहत उक्त अधिनियम की धारा 7 के अधीन गठित अम म्यालय, कलकत्ता।

[सं-20025/34/88-II-सो. एल. एम.-II]

राम कानुगा, अवर सचिव

New Delhi, the 1st December, 1988

S.O. 3670.—In exercise of the powers conferred by sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (14 of 1947) and in supersession of his Ministry's notifications S.O. No. 2922 dated the 19-9-1973 and in partii Imocification of S.O. No. 1175 dated 20-3-68, the Central Government hereby makes the following further amendments in the notification of the late Ministry of Lab, B nployment and Rehabilitation (Department of Labour and employment) No. S.O. 4650 dated the 19th December, 1967, namely :—

In the Table annexed to the said notification—

(i) for the entri s against Serial Numbers 4 and 5, the following entries shall respectively be substituted, namely :—

1	2	3
4. Labour Court No. 1, Dhanbad, constituted under Section 7 of the said Act, by notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 1954, dated the 30th July, 1960.		All districts of Bihar excluding the district of Ranchi. Singhbhum, Palamau, Bhimpur, Rohtas, Saran, Siwan, Champaran East, Champaran West, Muzaffarpur, Vaishali, Sitamarhi, Begusarai, Patna, Hazaribagh, Nawadah, Dumka, Godda, Sahebganj, Deoghar and the Sadar sub-division of Dhanbad.
5. Labour Court (No. 2), Dhanbad constituted under Section 7 of the said Act by Notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 1097, dated the 22nd May, 1965.		The districts of Ranchi, Singhbhum, Palamau, Bhojpur, Rohtas, Saran, Siwan, Champaran East, Champaran West, Muzaffarpur, Vaishali, Sitamarhi, Begusarai, Patna, Hazaribagh, Nawadah and Sadar Sub-division of Dhanbad.
(ii) for the entries against Serial No. 8 the following entries shall be substituted, namely :—		
8. Labour Court, Calcutta, constituted under section 7 of the said Act, by notification of the Government of India in the Ministry of Labour and Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2652, dated the 24th August, 1966.		The state of West Bengal excepting the districts of Burdwan, Birbhum, Bankura and Purulia.
8A. Labour Court, Asansol, constituted under Section 7 of the said Act by notification of the Government of India in the Ministry of Labour No. S.O. 2862 dated 5-10-87.		Districts of Burdwan, Birbhum, Bankura and Purulia of West Bengal and districts of Dumka, Godda, Sahebganj and Deoghar of Bihar.

[Z-20025/34/88-II-CLS II]
RAM KANUGA, Under Secy.

नई दिल्ली, 5 दिसम्बर, 1988

का.सा. 3671—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारत कोकिंग कोल का भुलनबारारी कोलियरी के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-88 को प्राप्त हुआ था।

New Delhi, the 5th December, 1988

S. O. 3671.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government Industrial Tribunal hereby published the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Bhulanbararee Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 22-11-1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 77 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES:

Employers in relation to the management of Bhulanbararee Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES:

On behalf of the workmen: Shri J. P. Singh, Advocate.

On behalf of the employers: Shri B. Joshi, Advocate.

STATE: Bihar.

INDUSTRY: Coal

Dated, Dhanbad, the 15th November, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(92)/86-D.IV(A), dated, the 2nd February, 1987.

SCHEDULE

"Whether the action of the Management of Bhulanbararee Colliery of M/s. B. C. C. Ltd., in allowing Shri N. R. Bhattacharjee, Office Assistant in Clerical Special Grade to work as Bonus Clerk in Clerical Grade-II is justified? If not, to what relief the workman is entitled?"

The case of the workmen is that the concerned workman Shri N. R. Bhattacharjee was working in the Statistical section as Office Assistant as a permanent workman. He was working as Office Assistant in the clerical special grade since long but the management directed him to work as Bonus clerk in Grade-II without assigning any reason in violation of the mandatory provision of Section 9A of the I.D. Act. The management had forced the concerned workman to work as Bonus Clerk in order to affect his future promotion. The change of the concerned workman from special Grade to Bonus Clerk Grade-II was a change of cadre and this could not have been done without giving any notice under Section 9A of the I.D. Act. This was done deliberately by the management with ulterior motive to victimise him as the local management was biased and prejudiced against him for his Trade union activities. At the relevant time the concerned workman was a Branch President of the Janta Mazdoor Sangh. The concerned workman was getting 30 days wages in a month while working as Office Assistant in the Statistical Assistant section but he was getting 26 days wages in a month after his posting as Bonus Clerk in Clerical Grade-II. The concerned workman and his union represented before the management several times but with no result. Thereafter an industrial dispute was raised which ultimately resulted in the present reference. It is submitted on behalf of the workmen

that the action of the management in asking the concerned workman to work as Bonus Clerk in Grade-II is illegal, arbitrary, unjustified and against the principles of natural justice. It has therefore been prayed that the reference be decided in favour of the workmen and the management be directed to allow the concerned workman to work in the statistical section as Office Assistant with all consequential benefits with retrospective effect.

The case of the management is that the concerned workman is a special grade clerk. Before his posting at Barora colliery in January, 1986 he was working at Bhulanbararee colliery as special grade clerk. Bhulanbararee colliery has merged with Baroree colliery and now there exists only one office for both the collieries. There is no question of a separate Bhulanbararee colliery after merger although the different outlet of the mine remain at as it is coming under the administrative control of one colliery office at Baroree. As a result of reorganisation the office staff were readjusted on different jobs. The concerned workman was looking after the work of despatch section as Special Grade Clerk while posted at Bhulanbararee Colliery. After his posting at Baroree Colliery he is looking after the bonus section as a special grade clerk and is getting the same scale of pay and is continuing as special grade clerk. There has been no change in the condition of service and his seniority in the special grade is not disturbed. The concerned workman is interested to work in the despatch section and not in the bonus section with some ulterior motive. The special grade clerk personnel working at Baroree colliery in despatch section is senior to the concerned workman and the said person also will not like to be shifted from despatch section. It is not a fact that the concerned workman was converted from special grade to clerical Grade-II of his posting to Baroree Colliery. All the clerical staff working in despatch, bonus, P.F. Bill sections of different collieries of the Area are put in one cadre and their promotions are affected on the basis of recommendation of one D.P.C. They are posted from one section to another depending upon availability of vacancies in different sections. The total number of vacancies in a special grade, Grade-I etc. of the entire Area at different sections are ascertained and persons are promoted to fill up the vacant post. In such process the persons working in different section may be promoted to special grade whereas the persons working in Bonus section or bill section may not be promoted. The persons promoted may be promoted in any section. All the monthly paid staff are required to work on all working days in a month and they are paid wages on monthly basis and each workman is entitled to weekly days of rest under the Mines Act. No workman can claim work for 30 days of wages for that. On the above facts it is submitted that the concerned workman was not demoted from his special grade to Grade-II.

The only point for decision in this reference is whether the concerned workman who was Office Assistant in Clerical Special Grade has been allowed to work as Bonus Clerk in Clerical Grade-II.

The workmen have examined one witness WW-1 who is the concerned workman himself. The documents of the workmen have been marked Ext. W-1 to W-13. The management neither examined any witness nor produced any document as exhibit in the case.

The dispute is whether the concerned workman has been allowed to work as Bonus Clerk in clerical Grade-II. It is the admitted case of the parties that the concerned workman was a special grade Clerk. It will appear from the evidence of the concerned workman himself that he was promoted to Clerk special grade from 1-7-84 and he is continuing in the said grade. In cross-examination he has stated that he is getting the salary of clerical special grade. He has further stated in his cross-examination that if a person working as bonus clerk in clerical Grade-II is promoted to Clerical Grade-I, he may be posted in any other section in clerical Grade-I. He has also admitted that there is no mention in his promotion order of clerical Grade-I that he was being promoted to Statistical cadre. It is thus obvious that after a person is promoted to clerical special grade he may be promoted to any other section in special clerical grade and the promotion is not for the purpose of his posting in any particular section. It will also appear from his evidence that he was a monthly paid staff and his salary was fixed

according to NCWA-III. There is no evidence to the effect that his salary was reduced after his transfer to the bonus section. Ext. W-1 dated 10-1-86 is the office order by which the concerned workman was working as a clerk in the despatch section was allowed to work as bonus clerk in the bonus section. 'I think the workmen have raised the dispute only because it is written in Ext. W-1 that the concerned workman was being entrusted to work as "Bonus Lipik" and on its basis it has been expanded by the workmen that he was actually posted as Bonus clerk and placed in Clerical Grade-II vide Clerical staff Grading and nomenclature as stated in Ext. W-2. The said officer order Ext. W-1 does not disclose that the concerned workman was allowed to work in a clerical Grade-II as bonus clerk. On the other hand it is admitted that the concerned workman is still continuing as special grade clerk and is getting the salary of clerical special grade.

No evidence has been led to show that he has been asked to do the duties of bonus clerk of clerical grade-II and as such it cannot be said that although he is getting the wages of clerical special grade he has been asked to do the work of a lower grade.

From the evidence discussed above it will appear that the concerned workman is still continuing in special clerical grade and is getting the salary of special clerical grade. There is no evidence that the concerned workman has been directed to work as bonus clerk in Clerical Grade-II. It is also admitted that a special grade clerk of one section can be transferred to another section and no exception can be taken on the ground that the concerned workman has been transferred from statistical section to Bonus section.

In the result, I hold that the action of the management of Bhulanbararee colliery of M/s. B.C.C.L. in allowing the concerned workman Shri N. R. Bhattacharjee Office Assistant in Clerical special Grade to work in Bonus Section is justified, as it is the admitted case of the parties that the concerned workman is not working as Bonus Clerk in clerical grade-II. In view of the above the concerned workman is not entitled to any relief.

This is my Award.

J. N. SINHA, Presiding Officer.
[No. L-24012/92/86-D.IV (B)/IV (A)]
K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 7 दिसम्बर, 1988

क्र.आ. 3672—केंद्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा प्रपेक्षित है कि सिस्मिट्टी पेपर मिल, होशंगाबाद को, जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची का प्रविष्टि 21 के अन्तर्गत निदिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाना चाहिए ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 2 के खण्ड (इ) के उपखण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार उक्त उद्योग को उक्त अधिनियम

के प्रयोजनों के लिए तत्काल प्रभाव से छह माह की कामावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[संख्या एस-11017/10/81-डी-1 (ए)]

New Delhi, the 7th December, 1988

S. O. 3672.—Whereas the Central Government is satisfied that the public interest requires that the Security Paper Mill, Hoshangabad, which is covered by item 21 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/10/81-D.I(A)]

क्र.आ. 3673—केंद्रीय सरकार का यह समाधान हो गया है कि लोकहित में यह प्रपेक्षित है कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की पहली अनुसूची में प्रविष्टि 17 के अन्तर्गत आने वाले तेल क्षेत्र में सेवा उक्त अधिनियम के प्रयोजनार्थ लोक उपयोगी सेवा घोषित की जाये ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (इ) के उपखण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार उक्त अधिनियम के प्रयोजनार्थ उक्त उद्योग को तत्काल प्रभाव से छह माह की अवधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[संख्या एस-11017/5/85-डी-1 (ए)]

नन्द लाल, अवर सचिव.

S.O. 3673.—Whereas the Central Government is satisfied that the public interest requires that the service in any Oil field which is covered by entry 17 in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purpose of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/5/85-D.I. (A)]

NAND LAI, Under Secy.

